



**U.S. Environmental Protection Agency  
5 Post Office Square Suite 100  
Boston, MA 02109 – 3912**

April 29, 2020

**BY ELECTRONIC MAIL ONLY**

Robert Warren Lavallee III, President  
ACM Group, Inc  
50A Northwestern Drive Unit 10  
Salem, New Hampshire 03079

Re: Consent Agreement and Final Order  
In the Matter of ACM Group, Inc., TSCA-01-2019-0061

Dear Mr. Lavallee:

Pursuant to the Consent Agreement and Final Order (“CAFO”), ACM shall pay a civil penalty of seven thousand two hundred three dollars (\$7,203), plus interest, in six (6) installments. Due to the recent change in economic circumstances, ACM has requested payments to begin on June 10, 2020. The installment payments are to be made and payment received by EPA on the dates indicated below:

1. Respondent shall pay \$1,218 by June 10, 2020;
2. Respondent shall pay \$1,218 by July 10, 2020;
3. Respondent shall pay \$1,218 by August 10, 2020;
4. Respondent shall pay \$1,218 by September 10, 2020;
5. Respondent shall pay \$1,218 by October 13, 2020; and,
6. Respondent shall pay \$1,218 by November 10, 2020.

If you have any questions, I can be reached at (617) 918-1809.

Sincerely,

PETER DECAMBRE Digitally signed by PETER  
DECAMBRE  
Date: 2020.04.29 10:23:43 -04'00'

Peter DeCambre  
Senior Enforcement Counsel

cc: Robert LaVallee, (ACM)

**From:** [Summers, Mary](#)  
**To:** [Annicella, Alan](#); [Covington, Bryce](#); [Caplan, Robert W.](#)  
**Subject:** FW: Docket#TSCA-04-2020-3101(b)  
**Date:** Monday, March 30, 2020 3:26:33 PM

---

Whats next?

-----Original Message-----

From: Terri Sanchez <allaboutdoors7@aol.com>  
Sent: Monday, March 30, 2020 2:46 PM  
To: Summers, Mary <Summers.Mary@epa.gov>  
Subject: Docket#TSCA-04-2020-3101(b)

Hello Ms. Summers,  
Hope this email finds you well.  
Due to COVID-19 circumstances we have been forced to close our doors temporarily.  
At this time We Are unable to make the final order payment.  
How can we go about filing for an extension of payment?

Please email me your responde or give me a call at (b) (6) .

Thank you,  
Terri Sanchez  
All about Doors  
2402 NW 72 Ave.  
Miami,FL, 33122  
305-267-2734





PO Box 51986 Toa Baja, PR 00950-1986  
o 787-788-7171 republicservices.com

April 8, 2020

Carmen Guerrero  
US Environmental Protection Agency, Region 2  
Caribbean Environmental Protection Division  
City View Plaza II, Suite 7000 #48  
Road PR-165 km 1.2  
Guaynabo, Puerto Rico 00968-8069

PONCE Landfill RCRA SUB-C  
Alternative Schedule for First Semi-Annual 2020 Sampling Event, Ponce  
Municipal Landfill Subtitle-C Permit  
End of Baramaya Avenue, Ponce, Puerto Rico  
RCRA Permit No. PRD980594709; Allied Waste of Ponce

Dear Mrs. Guerrero,

Ponce Subtitle-C Landfill is subject to facility groundwater permit requirements under the Resource Conservation and Recovery Act (RCRA) regulations of the United States Environmental Protection Agency (EPA); RCRA Permit No. PRD980594709. The first groundwater sampling of the Semi-Annual 2020 Sampling Event is scheduled to happen in April 2020. However, due to the pandemic situation caused by the Corona Virus (COVID-19), as by March 30, 2020, the island of Puerto Rico, as well as other countries around the world, have highly dangerous circumstances, and the Governor of Puerto Rico has ordered a curfew for all citizens except for those working in essential health and food services. Moreover, the President of the United States extended the federal social distancing guidelines to April 30, 2020. This situation includes travel restrictions, so the contractor, Pace Analytical Services (Pace), our groundwater sampling service provider, would not be able to make the trip to Puerto Rico to perform the monitoring corresponding to April 2020.

Section 270.30(5) (compliance schedules) of the Code of Federal Regulations No. 40 (40 CFR) requires the permittee to submit reports of compliance or noncompliance with, or any progress reports on, interim and final requirements contained in any compliance schedule of this permit no later than 14 days following each schedule date. This notice is being sent pursuant to this regulation more than 15 days in advance. Considering the extraordinary events that are

occurring because of the COVID-19. Republic will not be able to conduct the First Semi-Annual Sampling Event as scheduled in April 2020. We propose the month of June of the current year as an alternate schedule for the sampling event.

We hope you consider these extraordinary events and our efforts to comply and support the proposed alternative.

Should you have any questions, please do not hesitate to contact us at your convenience.

Cordially,

A handwritten signature in blue ink, appearing to read 'Miguel García', with a stylized flourish at the end.

Miguel García, P.E.  
Environmental Manager  
Allied Waste of Ponce, dba Republic Services



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**  
WASHINGTON, D.C., 20460

OFFICE OF  
ENFORCEMENT AND  
COMPLIANCE ASSURANCE

April 21, 2020

*By Email*

Jamey Halley  
EHS Director  
Anchor Glass Container Corporation  
3001 North Rocky Point Drive East, Suite 300  
Tampa, Florida  
[jamey.halley@anchorglass.com](mailto:jamey.halley@anchorglass.com)

Re: Force Majeure Notification under 2018 Consent Decree

Dear Mr. Halley:

We have received your letter of April 1, 2020, submitting a force majeure notice that you explain is due to the impact of the novel coronavirus COVID-19. This letter will serve as the initial response on behalf of the United States, after consultation with the States of Indiana and Oklahoma, pursuant to the Consent Decree entered in United States, et al v. Anchor Glass Container Corp., Case Number 3:18-cv-943-J-39JBT (M.D. Fla.) (Consent Decree or Decree).


Your letter explains that due to the national COVID-19 emergency, it is possible that Anchor may not be able to meet specific conditions of the Consent Decree due to potential difficulties in acquiring raw materials, possible restrictions on availability of third party contractors and management personnel, possible operational adjustments to maintain operation, constraints on travel and containment measures, and force majeure notices from vendors.

We appreciate your notice under the Consent Decree and your commitment to take all feasible steps to "mitigate, minimize or avoid non-compliance." As you know, the Consent Decree requires that Anchor Glass exercise its "best efforts" to fulfill the Decree obligations, which "includes using best efforts to anticipate any potential Force Majeure event and best efforts to address the effects of any such even (a) as it is occurring and (b) after it has occurred in order to prevent or minimize any resulting delay to the greatest extent possible." Consent Decree Paragraph 141. Anchor must adhere to the force majeure provisions of the Decree to the extent Anchor believes any delays in Anchor Glass' obligations are warranted.

Because your notice is based on the occurrence of possible events that may or may not occur and impact compliance with the Decree, the United States must defer judgment on Anchor Glass' force majeure claims at this time. For a force majeure to be ripe for decision, Anchor must provide the detailed information specified in Consent Decree Paragraph 142.<sup>1</sup> This may require multiple notices, depending on the deadlines for the different obligations and the effect of the event on those deadlines. The United States' decision to defer judgment at this time should not be construed as acceptance of any potential noncompliance at the facility covered by the Decree.

Thank you for your attention to these matters. Please feel free to contact me to discuss any of these issues further.

Sincerely,

  
for

Phillip A. Brooks  
Director, Air Enforcement Division

cc: Erin E. Filban Tislow, Office of Indiana Attorney General (via email)  
Madison Miller, Oklahoma Department of Environmental Quality (via email)  
Steve O'Rourke, DOJ (via email)  
Erick Ihlenburg, Region 2 (via email)  
Bonnie Sawyer, Region 4 (via email)  
Padmavati Bending, Region 5 (via email)  
Arati Tripathi, Region 6 (via email)

---

<sup>1</sup> The time appears to be ripe to submit further information related stack testing at Henryetta Furnace #1 and #2, Lawrenceburg Furnace #2, and Elmira Furnace #2 as required under the Decree. Please clarify your understanding of the dates by which the Decree required such testing and whether you had the tests timely scheduled and if you canceled or rescheduled the tests. Discussion between the parties may be warranted to achieve clarity.



BACARDI CORPORATION

April 6, 2020

Compliance Assistance Program Support Branch  
U. S. Environmental Protection Agency Region II  
290 Broadway – 21<sup>st</sup> Floor  
New York, New York 10007-1866

Director,  
Caribbean Environmental Protection Division  
US Environmental Protection Division  
City View Plaza II – Suite 7000  
#48 Road 165 Km 1.2  
Guaynabo, Puerto Rico 00968-8069

Director,  
Water Quality Area  
Environmental Quality Board  
P.O. Box 11488  
San Juan, P.R. 00910

**RE: Bacardi Corporation  
Force of Majeure Special Notification**

To whom it may concern:

Last Sunday March 15, 2020 the Governor of Puerto Rico declared by means of an Executive Order a curfew on the island as a measure to minimize the potential of infection and transmission of the Coronavirus or COVID-19. In compliance with the Executive Order decreed, Bacardi Corporation (Bacardi) ceased operations on the afternoon of Monday March 16 of 2020. Given the situation on the island and the extension of the curfew until April 12, 2020, Bacardi hereby communicates the likelihood of having its compliance affected in regards with the requirements of some of its applicable regulatory permits, in terms of issuing reports, notifications, and activities such as monitoring, inspections, among others, in the required periods of time established in the permits. Bacardi is committed to ensure compliance and carry out all the necessary actions/activities once its operations can resume and are stabilized and will be communicating any events that may affect the compliance of our site.

**BACARDI – THE WORLD'S GREAT RUM**

PO BOX 363549 SAN JUAN, PUERTO RICO 00936-3549 787 788-1500 FAX 787 788-0340

BACARDI AND THE BAT DEVICE ARE REGISTERED TRADEMARKS OF BACARDI & COMPANY LIMITED

Should you have questions or need additional information you may contact Sandra Guzmán or Myrna Suárez at (419) 705-2082 / [sguzmanr@bacardi.com](mailto:sguzmanr@bacardi.com) and (787) 382-0804 / [msuarez@bacardi.com](mailto:msuarez@bacardi.com) respectively.

Cordially,

  
Magaly Feliciano  
EHS Manager

c Karen O'Brien

## Mceathron, Kimberly

---

**From:** Modigliani, Justine  
**Sent:** Tuesday, May 5, 2020 8:57 AM  
**To:** JFemia@co.bergen.nj.us  
**Cc:** kriley@co.bergen.nj.us; Mceathron, Kimberly; CKavvadas@co.bergen.nj.us  
**Subject:** FW: EPA MS4 Order: April 30th Report  
**Attachments:** Apr 30 Report\_ LTR\_4\_28\_2020.pdf

Dear Mr. Femia,

I hope this email finds you in good health. Kimberly McEathron has forwarded your extension request to me for review. We have reviewed your request for an extension and, given the current circumstances, we are supportive of extending the deadline to complete Ordered Provisions 2.b and 2.c to field verify all MS4 outfalls and update the outfall map as requested, until November 30, 2020. Please continue to submit bi-monthly progress reports as required by the Order.

Please keep us informed should any other questions or concerns arise.

Justine

Justine Modigliani, P.E., Chief  
CWA Compliance Section  
Water Compliance Branch  
Enforcement and Compliance Assurance Division  
US Environmental Protection Agency Region 2  
290 Broadway (21st Floor)  
New York, New York 10007  
(212) 637-4268

---

**From:** Riley, Karen Anne <[kriley@co.bergen.nj.us](mailto:kriley@co.bergen.nj.us)>  
**Sent:** Wednesday, April 29, 2020 9:45 PM  
**To:** Mceathron, Kimberly <[McEathron.Kimberly@epa.gov](mailto:McEathron.Kimberly@epa.gov)>  
**Cc:** Femia, Joseph <[JFemia@co.bergen.nj.us](mailto:JFemia@co.bergen.nj.us)>; Kavvadas, Christos <[CKavvadas@co.bergen.nj.us](mailto:CKavvadas@co.bergen.nj.us)>  
**Subject:** RE: EPA MS4 Order: April 30th Report

Kim,

Attached is the monthly Report of Bergen County's MS4 activities. We mailed this report via certified mail. A copy was also mailed to NJ DEP.

You will receive (if you have not received it already) our request for an extension of the April 30 deadline to November 30, 2020. We are requesting this deadline because we do not know when the COVID-19 restrictions will be changed.

Thank you for your consideration.

kar

**Karen Anne Riley, Ph.D., P.E., L.S., P.P.**  
**Principal Engineer - Hydraulics**

County of Bergen  
Department of Planning and Engineering  
One Bergen County Plaza, 4<sup>th</sup> Floor  
Hackensack, NJ 07601  
201-336-6427  
[kriley@co.bergen.nj.us](mailto:kriley@co.bergen.nj.us)



This e-mail communication (including any attachment) from the County of Bergen may contain personal or confidential information which is protected from disclosure by the attorney-client privilege or other privilege or legal doctrine. If the reader of this communication is not the intended recipient, you are hereby notified that you have received this communication in error and that your review, dissemination, distribution, or copying of the communication is strictly prohibited.  
Thank you.

---

**From:** Riley, Karen Anne  
**Sent:** Friday, April 17, 2020 8:59 PM  
**To:** 'McEathron.Kimberly@epa.gov' <[McEathron.Kimberly@epa.gov](mailto:McEathron.Kimberly@epa.gov)>  
**Cc:** Femia, Joseph <[JFemia@co.bergen.nj.us](mailto:JFemia@co.bergen.nj.us)>; Kavvadas, Christos <[CKavvadas@co.bergen.nj.us](mailto:CKavvadas@co.bergen.nj.us)>  
**Subject:** FW: EPA MS4 Order

Kim,

I am responding on behalf on Mr. Kavvadas.

We sent the April 1 report via certified mail. As you requested, a copy is attached.

We will correspond with you shortly regarding the need to extend the deadline.

Take you for your consideration.

I hope you and yours are safe.

kar

**Karen Anne Riley, Ph.D., P.E., L.S., P.P.**  
**Principal Engineer - Hydraulics**  
County of Bergen  
Department of Planning and Engineering  
One Bergen County Plaza, 4<sup>th</sup> Floor  
Hackensack, NJ 07601  
201-336-6427  
[kriley@co.bergen.nj.us](mailto:kriley@co.bergen.nj.us)



This e-mail communication (including any attachment) from the County of Bergen may contain personal or confidential information which is protected from disclosure by the attorney-client privilege or other privilege or legal doctrine. If the



## Melcher, John

---

**Subject:** FW: NPDES RGP No. MAG910718 - Boston Children's Hospital Clinical Building

---

**From:** Handler, Neil

**Sent:** Monday, April 13, 2020 8:39 AM

**To:** Thibault, Jonathan M. <[JThibault@haleyaldrich.com](mailto:JThibault@haleyaldrich.com)>

**Cc:** Vanzler, Lee <[LVanzler@haleyaldrich.com](mailto:LVanzler@haleyaldrich.com)>; Johnson, Keith <[KJohnson@haleyaldrich.com](mailto:KJohnson@haleyaldrich.com)>; 'Seaburg, Jason'

<[JSeaburg@suffolk.com](mailto:JSeaburg@suffolk.com)>; McDonald, Marie <[mcdonald.marie@epa.gov](mailto:mcdonald.marie@epa.gov)>; NPDES, GeneralPermits

<[Npdes.Generalpermits@epa.gov](mailto:Npdes.Generalpermits@epa.gov)>; Little, Shauna <[Little.Shauna@epa.gov](mailto:Little.Shauna@epa.gov)>; Dart, Denny <[Dart.Denny@epa.gov](mailto:Dart.Denny@epa.gov)>

**Subject:** RE: NPDES RGP No. MAG910718 - Boston Children's Hospital Clinical Building

Jonathan,

Wanted provide you with a slight update on what was decided by EPA HQs for the NODI code for facilities to use to identify impacts related to the COVID-19 Pandemic. Please see the updated info below – please also feel free to contact me if you have any questions.

Thanks,

Neil Handler

Senior Enforcement Coordinator

EPA Region 1

5 Post Office Square, Suite 100 (OES04-4)

Boston, MA 02109-3912

(617) 918-1334

Fax (617) 918-0334

[handler.neil@epa.gov](mailto:handler.neil@epa.gov)

### IMPORTANT – COVID-19 AND COMPLYING WITH YOUR NPDES PERMIT

Facilities are expected to make every effort to comply with their NPDES permits. However, if for reasons related to COVID-19, you are able to obtain some but not all of your samples or analyze some but not all of your samples required by your permit, please submit your discharge monitoring reports (DMRs) through NetDMR by the due date with the information you have been able to obtain. Please also provide an explanation in either the comment section of the DMR or in a separate attachment describing how COVID-19 impacted your ability to take or analyze all of your required samples. **If you are not able to sample or analyze any of the samples required by your permit, please submit your DMRs through NetDMR by the due date using the No Data Indicator or NODI code of “Z” - “COVID-19”. When using the NODI code Z, a facility should provide an explanation in either the comment section of the DMR or in a separate attachment added to the DMR.** The Explanation should identify the specific reasons for the sampling/reporting delay and how COVID-19 was the cause of the noncompliance. Details related to NPDES Compliance and Reporting in

Response to the COVID-19 Pandemic can be found at: <https://netdmr.zendesk.com/hc/en-us/articles/360041746691-Covid-19-Information-Page>.

---

**From:** Handler, Neil  
**Sent:** Friday, March 27, 2020 3:35 PM  
**To:** Thibault, Jonathan M. <[JThibault@haleyaldrich.com](mailto:JThibault@haleyaldrich.com)>  
**Cc:** Vanzler, Lee <[LVanzler@haleyaldrich.com](mailto:LVanzler@haleyaldrich.com)>; Johnson, Keith <[KJohnson@haleyaldrich.com](mailto:KJohnson@haleyaldrich.com)>; 'Seaburg, Jason' <[JSeaburg@suffolk.com](mailto:JSeaburg@suffolk.com)>; McDonald, Marie <[mcdonald.marie@epa.gov](mailto:mcdonald.marie@epa.gov)>; NPDES, GeneralPermits <[Npdes.Generalpermits@epa.gov](mailto:Npdes.Generalpermits@epa.gov)>; Little, Shauna <[Little.Shauna@epa.gov](mailto:Little.Shauna@epa.gov)>; Dart, Denny <[Dart.Denny@epa.gov](mailto:Dart.Denny@epa.gov)>  
**Subject:** RE: NPDES RGP No. MAG910718 - Boston Children's Hospital Clinical Building

Hi John,

Not sure if you folks saw the guidance that was issued by EPA HQs yesterday afternoon but in case you haven't I have attached a copy of the memo to this email.

As to how you interpret and report areas of monitoring noncompliance that arise as a result of impacts associated with COVID-19, we are still awaiting the final go ahead from EPA HQs on this, but here in MA and NH we plan to issue the following guidance :

Facilities are expected to make every effort to comply with their NPDES permits. However, if for reasons related to COVID-19, you are not able to sample or analyze samples required by your permit, please submit your discharge monitoring reports (DMRs) through NetDMR by the due date using the No Data Indicator or NODI code of "3" - "Special Report Attached". When using the NODI code 3, a facility must provide an explanation in either the comment section of the DMR or in a separate attachment added to the DMR. The Explanation should identify the specific reasons for the sampling/reporting delay and how the COVID-19 was the cause of the noncompliance as discussed in the Susan Parker Bodine Memo (<https://www.epa.gov/sites/production/files/2020-03/documents/oecamemooncovid19implications.pdf> ).

Thanks and hope this helps,

Neil Handler  
Senior Enforcement Coordinator  
EPA Region 1  
5 Post Office Square, Suite 100 (OES04-4)  
Boston, MA 02109-3912

(617) 918-1334  
Fax (617) 918-0334  
[handler.neil@epa.gov](mailto:handler.neil@epa.gov)

---

**From:** Thibault, Jonathan M. <[JThibault@haleyaldrich.com](mailto:JThibault@haleyaldrich.com)>  
**Sent:** Friday, March 27, 2020 1:45 PM  
**To:** Handler, Neil <[Handler.Neil@epa.gov](mailto:Handler.Neil@epa.gov)>

**Cc:** Vanzler, Lee <[LVanzler@haleyaldrich.com](mailto:LVanzler@haleyaldrich.com)>; Johnson, Keith <[KJohnson@haleyaldrich.com](mailto:KJohnson@haleyaldrich.com)>; 'Seaburg, Jason' <[JSeaburg@suffolk.com](mailto:JSeaburg@suffolk.com)>; McDonald, Marie <[mcdonald.marie@epa.gov](mailto:mcdonald.marie@epa.gov)>; NPDES, GeneralPermits <[Npdes.Generalpermits@epa.gov](mailto:Npdes.Generalpermits@epa.gov)>; Little, Shauna <[Little.Shauna@epa.gov](mailto:Little.Shauna@epa.gov)>; Dart, Denny <[Dart.Denny@epa.gov](mailto:Dart.Denny@epa.gov)>  
**Subject:** RE: NPDES RGP No. MAG910718 - Boston Children's Hospital Clinical Building

Hi Neil,

I'm writing to check in on the status of your email below regarding guidance on NPDES RGP compliance monitoring during the suspension of construction activities, particularly in Boston. Are there any updates on this yet?

Thanks and take care,

**Jonathan M. Thibault, P.E. (CO)**

Technical Specialist

T: (720) 616-4404

C: (617) 680-2293

---

**From:** Handler, Neil <[Handler.Neil@epa.gov](mailto:Handler.Neil@epa.gov)>

**Sent:** Wednesday, March 18, 2020 6:01 AM

**To:** Thibault, Jonathan M. <[JThibault@haleyaldrich.com](mailto:JThibault@haleyaldrich.com)>

**Cc:** Vanzler, Lee <[LVanzler@haleyaldrich.com](mailto:LVanzler@haleyaldrich.com)>; Johnson, Keith <[KJohnson@haleyaldrich.com](mailto:KJohnson@haleyaldrich.com)>; 'Seaburg, Jason'

<[JSeaburg@suffolk.com](mailto:JSeaburg@suffolk.com)>; McDonald, Marie <[mcdonald.marie@epa.gov](mailto:mcdonald.marie@epa.gov)>; NPDES, GeneralPermits

<[Npdes.Generalpermits@epa.gov](mailto:Npdes.Generalpermits@epa.gov)>; Little, Shauna <[Little.Shauna@epa.gov](mailto:Little.Shauna@epa.gov)>; Dart, Denny <[Dart.Denny@epa.gov](mailto:Dart.Denny@epa.gov)>

**Subject:** RE: NPDES RGP No. MAG910718 - Boston Children's Hospital Clinical Building

**CAUTION: External Email**

---

Jonathan,

Thank you for your email below and for bringing this issue to our attention. EPA Region 1 is currently working with our counterparts at EPA HQs to come up with an appropriate way for you (as well as other facilities that are similarly effected across the United States) to meet and comply your NPDES reporting and monitoring requirements over the next several months. We hope to get back to you in the very near future with a response.

Thanks,

Neil Handler

Senior Enforcement Coordinator

EPA Region 1

5 Post Office Square, Suite 100 (OES04-4)

Boston, MA 02109-3912

(617) 918-1334

Fax (617) 918-0334

[handler.neil@epa.gov](mailto:handler.neil@epa.gov)

---

**From:** Thibault, Jonathan M. <[JThibault@haleyaldrich.com](mailto:JThibault@haleyaldrich.com)>

**Sent:** Tuesday, March 17, 2020 5:47 PM

**To:** NPDES, GeneralPermits <[Npdes.Generalpermits@epa.gov](mailto:Npdes.Generalpermits@epa.gov)>; Little, Shauna <[Little.Shauna@epa.gov](mailto:Little.Shauna@epa.gov)>; Handler, Neil <[Handler.Neil@epa.gov](mailto:Handler.Neil@epa.gov)>; McDonald, Marie <[mcdonald.marie@epa.gov](mailto:mcdonald.marie@epa.gov)>  
**Cc:** Vanzler, Lee <[LVanzler@haleyaldrich.com](mailto:LVanzler@haleyaldrich.com)>; Johnson, Keith <[KJohnson@haleyaldrich.com](mailto:KJohnson@haleyaldrich.com)>; 'Seaburg, Jason' <[JSeaburg@suffolk.com](mailto:JSeaburg@suffolk.com)>  
**Subject:** NPDES RGP No. MAG910718 - Boston Children's Hospital Clinical Building

Hello,

I'm writing to provide an update on NPDES RGP No. MAG910718. As directed by the City of Boston, the Boston Children's Hospital Hale Family Clinical Building project is suspending construction operations. See attached letter from Suffolk, the GC and also the operator of Permit No. MAG910718. It is likely that we will not be able to obtain our March monthly compliance monitoring samples until construction operations resume. The pumps and treatment system will continue to operate, and temporary construction dewatering effluent will continue to be discharged during this time. If construction operations do not resume prior to the end of March, we propose a variance such that we will collect our next monthly compliance monitoring samples as soon as we are able when construction operations resume. I think we are all hoping that would be in April.

Please let us know if this proposed variance is acceptable, should it need to be implemented.

Thanks,

**Jonathan M. Thibault, P.E. (CO)**

Technical Specialist

**Haley & Aldrich, Inc.**

8101 E. Prentice Avenue | Suite 600  
Greenwood Village, Colorado 80111

T: (720) 616-4404

C: (617) 680-2293

[www.haleyaldrich.com](http://www.haleyaldrich.com)



**BUCKEYE TERMINALS, LLC**

**Buckeye Caribbean Terminals LLC**

**Yabucoa Terminal**

Carr. 901 Km. 2.7

Bo. Camino Nuevo

PO Box 186

Yabucoa, PR 00767-0186

Phone 787 893-2424

Fax 787 893-3111

April 28, 2020

Ms. Carmen R. Guerrero-Pérez, Director  
U.S. Environmental Protection Agency  
Caribbean Environmental Protection Division  
City View Plaza, Suite 7000  
#48 165 Rd, Km 1.2  
Guaynabo, PR 00963-8069

RE: RCRA Semi-Annual Groundwater Monitoring  
Buckeye Caribbean Terminals LLC (Buckeye)  
Yabucoa, Puerto Rico  
EPA ID: PRD090074071

Dear Ms. Guerrero-Pérez:

Buckeye performs monthly and/or quarterly monitoring of free phase hydrocarbon (FPH) with interim recovery and semi-annual groundwater monitoring at its Yabucoa, PR facility in accordance with the facility's RCRA Permit (Section A.4.f of Module III) and the July 1, 2011 Class 1 Permit modification. The groundwater monitoring is performed at three Solid Waste Management Units (SWMUs): Main Dock Sump (SWMU 33), Barge Dock Sump (SWMU 34), and Northeast Refinery Area (SWMU 40). The FPH monitoring is performed at these three SWMUs and additionally two others: Watery Oil Separator (SWMU 43) and East Aisle Ditch (SWMU 45). In response to the public health crisis caused by COVID-19, the facility has not been able to perform the work since March 15, 2020, when the PR Government instituted work restrictions.

The purpose of this letter is to inform you that Buckeye has postponed the FPH monitoring/recovery and groundwater monitoring until after the PR Government lifts the COVID-19 restrictions. Such postponement would not adversely affect the near-term human health risk at the facility and is consistent with EPA's recent April 10, 2020 Memorandum entitled "*Interim Guidance on Site Field Work Decisions Due to Impacts of COVID-19.*"

It is not known at this time when the COVID-19 restrictions will be lifted. The PR Government's next revision date is May 3, 2020. Once the restrictions are lifted, Buckeye will evaluate when to resume the work and promptly notify EPA-CEPD.

Buckeye requests EPA-CEPD's approval for this modification of the schedule.

Please feel free to contact me at 787-382-0807 if you have any questions or concerns regarding the above matter.

Cordially,



Carmelo Silva

Health, Safety, Security, and Environmental Manager

cc: Walter Mugdan, USEPA Region 2  
Adolph S. Everett, P.E., USEPA Region 2  
Angel Salgado, USEPA-CEPD  
RCRA Record Center, USEPA, Region 2  
Lorna Rodríguez, Land Pollution Regulation Program, PREQB  
Martin Liebhardt, Evergreen Resources Group, LLC  
Leroy "Buddy" Bealer, Shell Oil Products, US  
Krista Snyder Manley, Buckeye Partners, L.P  
Joseph Lysonski, Anderson-Mulholland & Associates, Inc.  
Maxene Dwyer, AECOM  
Frank Perez Jimenez, PRLA, Director of Legal Services

## Melcher, John

---

**From:** Nick Cristofori <ncristofori@ceiengineers.com>  
**Sent:** Monday, March 30, 2020 9:37 AM  
**To:** Borci, Todd  
**Subject:** RE: MS4 enforcement

Hi Todd, thanks for the input. Much appreciated.

Our MS4 communities subject to a consent order are: Avon, Barnstable, Falmouth, and Lincoln Massachusetts.

I'll take a closer look and will reach out to our communities to keep them informed. If I have more questions, I'll be in touch. Thanks again.

**Nick Cristofori, P.E.\* | Comprehensive Environmental Inc.**  
**Principal, Project Manager**

Direct Line: 603-261-3054

[ncristofori@ceiengineers.com](mailto:ncristofori@ceiengineers.com)

\*Licensed in NH and RI

---

**From:** Borci, Todd <Borci.Todd@epa.gov>  
**Sent:** Monday, March 30, 2020 9:20 AM  
**To:** Nick Cristofori <ncristofori@ceiengineers.com>  
**Subject:** [EXTERNAL] RE: MS4 enforcement

Nick:

Thanks for the message. Yes, at the end of last week HQ issued a memorandum (at link below). As usual, it's a bit detailed but the point is essentially what we had been relaying to facilities previously – document what you can and cannot do, and report that to us in an email, compliance report, or annual report.

<https://www.epa.gov/sites/production/files/2020-03/documents/oecamemooncovid19implications.pdf>

If possible, could you reply with an email that lists the four communities? We are keeping a spreadsheet here in the region of who has contacted us. You can digest the memo and provide those details at a later date closer to the deadline contained in the AOs.

Hope that helps and thanks for inquiring.

tb

---

Todd J. Borci  
Water Compliance Section  
Enforcement and Compliance Assurance Division  
U.S. EPA New England  
5 Post Office Square  
Suite 100 (04-4)  
Boston, MA 02109-3912  
(617) 918 -1358  
[borci.todd@epa.gov](mailto:borci.todd@epa.gov)



---

**From:** Nick Cristofori <[ncristofori@ceiengineers.com](mailto:ncristofori@ceiengineers.com)>  
**Sent:** Monday, March 30, 2020 8:49 AM  
**To:** Borci, Todd <[Borci.Todd@epa.gov](mailto:Borci.Todd@epa.gov)>  
**Subject:** MS4 enforcement

Hi Todd, I hope you're staying healthy.

Quick question for you, one you've probably been getting a lot recently. CEI is currently working with a number of communities on MS4 compliance, of which 4 have an Order for Compliance from EPA to enact their bylaw/ordinances required under the 2003 Permit by the end of this coming June. All have drafted comprehensive bylaws for public vote at the spring town meeting, however with the COVID outbreak in full swing, communities are unsure if they'll be able to safely hold town meeting before the end of June. Some have already postponed their meeting indefinitely.

I understand that Region 1 has been having discussions with EPA HQ on how to handle the situation, but that was 12 days ago and unfortunately, a very long time ago with things changing on an almost daily basis. Have there been any additional discussions? Hopefully EPA can at least provide some guidance to communities with an OfC, if not all regulated MS4 communities.

Any information you can provide is appreciated. Thanks.

**Nick Cristofori, P.E.\* | Comprehensive Environmental Inc.  
Principal, Project Manager**

*Direct Line: 603-261-3054*  
21 Depot St. Merrimack, NH 03054  
41 Main St. Bolton, MA 01740  
[ncristofori@ceiengineers.com](mailto:ncristofori@ceiengineers.com)  
[www.ceiengineers.com](http://www.ceiengineers.com)



\*Licensed in NH and RI



**From:** [Wong, Virginia](#)  
**To:** [O'Brien, Tim](#); [Remnek, Alexandre](#)  
**Subject:** RE: Covid-19  
**Date:** Wednesday, March 18, 2020 3:29:46 PM

---

Tim,

Thank you for sharing the current situation at Auburn. I was in contact with NYSDEC, only the essential people are working in the office but most are still available to provide assistance remotely.

Please feel free to contact us if needed, we are well prepared to operate remotely and able to answer questions related to your program.

Stay safe!

Virginia Wong  
Chief, NPDES Section  
Water Division - EPA Region 2  
290 Broadway, New York, NY 10007  
212-637-4241  
[wong.virginia@epa.gov](mailto:wong.virginia@epa.gov)

---

**From:** O'Brien, Tim <[tobrien@auburnny.gov](mailto:tobrien@auburnny.gov)>  
**Sent:** Wednesday, March 18, 2020 2:56 PM  
**To:** Remnek, Alexandre <[Remnek.Alexandre@epa.gov](mailto:Remnek.Alexandre@epa.gov)>  
**Cc:** Wong, Virginia <[Wong.Virginia@epa.gov](mailto:Wong.Virginia@epa.gov)>  
**Subject:** RE: Covid-19

Alexi,

It was from Governor Cuomo for all operations within the municipality. My guess is that because of the high incidence of cases in NY they only wanted 50% of the work force on duty at one time to lessen exposure. We have contacted NYSDEC and been instructed to maintain personnel necessary to meet our SPDES permit requirements. That is why only office people are working remotely. If we lose our Director of Municipal Utilities, Chief Operator or Lab Tech I'm their backup.

Tim

---

**From:** Remnek, Alexandre [<mailto:Remnek.Alexandre@epa.gov>]  
**Sent:** Wednesday, March 18, 2020 2:27 PM  
**To:** O'Brien, Tim  
**Cc:** Wong, Virginia  
**Subject:** RE: Covid-19

Tim

You would get the request from the industry, otherwise we would be inundated at our end.

Just curious, do you or Virginia know why they asked you to reduce the number of workers by 50%.

Did NYSDEC send out a memo with regards to modified operation of WWTPs? This is the first I have heard of that (not that I am looped in with all of this), and that is definitely a major change.

Thanks,

Alexi

Alexandre Remnek  
Environmental Engineer  
Pretreatment Expert  
Unconventional Oil and Gas Regional Contact

NPDES Section  
Clean Water Regulatory Branch, Water Division  
Environmental Protection Agency, Region 2

290 Broadway  
New York, NY 10007

Work: 212-637-3774  
Fax: 212-637-3889  
E-mail: [remnek.alexandre@epa.gov](mailto:remnek.alexandre@epa.gov)

---

**From:** O'Brien, Tim <[tobrien@auburnny.gov](mailto:tobrien@auburnny.gov)>  
**Sent:** Wednesday, March 18, 2020 2:21 PM  
**To:** Remnek, Alexandre <[Remnek.Alexandre@epa.gov](mailto:Remnek.Alexandre@epa.gov)>  
**Subject:** RE: Covid-19

Alexi,

Thank you for the response.

I have no concerns with this particular industry due to their history. Is the written request from industry to me or me to EPA?

We have been told by NYS to reduce our workforce by 50%. As an essential service that is somewhat difficult. The four of us "Office People" will be working remotely from home. Otherwise it is status quo.

Tim

---

**From:** Remnek, Alexandre [<mailto:Remnek.Alexandre@epa.gov>]  
**Sent:** Wednesday, March 18, 2020 2:11 PM  
**To:** O'Brien, Tim  
**Cc:** Wong, Virginia  
**Subject:** RE: Covid-19

Tim

Thanks for the email, it is really important for us to hear what is happening out there. We are preparing an email to send out to all pretreatment programs today. The simple answer is yes, with a written request. The longer answer is that pretreatment sampling should continue judiciously... focus on investigations and facilities which have increased production, significant generation of pollutants and those which are in non-compliance.

Take care and stay safe,

Alexi

Alexandre Remnek  
Environmental Engineer  
Pretreatment Expert  
Unconventional Oil and Gas Regional Contact

NPDES Section  
Clean Water Regulatory Branch, Water Division  
Environmental Protection Agency, Region 2

290 Broadway  
New York, NY 10007

Work: 212-637-3774  
Fax: 212-637-3889  
E-mail: [remnek.alexandre@epa.gov](mailto:remnek.alexandre@epa.gov)

---

**From:** O'Brien, Tim <[tobrien@auburnny.gov](mailto:tobrien@auburnny.gov)>  
**Sent:** Wednesday, March 18, 2020 11:26 AM  
**To:** Remnek, Alexandre <[Remnek.Alexandre@epa.gov](mailto:Remnek.Alexandre@epa.gov)>  
**Subject:** Covid-19

Alexandre,

I have a request from one categorical industry to suspend the quarterly lab analysis during the Covid-19 pandemic. They are reducing operations and staffing going forward and have placed the facility in lockdown to outside personnel. There has been no history of violations and all previous reports are well below permitted limits. They will continue to sample from the discharge outside of the facility. Is this acceptable?

Tim



*Timothy L. O'Brien*  
*Industrial Pretreatment Coordinator*  
*Department of Municipal Utilities*  
**City of Auburn, New York**  
*35 Bradley Street*  
*Auburn, NY 13021*  
315-567-0026  
Email: [tobrien@auburnny.gov](mailto:tobrien@auburnny.gov)

---

CONFIDENTIALITY STATEMENT

This communication, together with any attachments hereto or links contained herein, is for the sole use of the intended recipient(s) and may contain information that is confidential, privileged, or legally protected, and as such is not a public document. If you are not the intended recipient, you are hereby notified that any review, disclosure, copying, dissemination, distribution or use of this communication is STRICTLY PROHIBITED. If you have received this communication in error, please notify the sender immediately by return e-mail message and delete the original and all copies of the communication, along with any attachments hereto or links herein, from your system (161109aub).

---

**From:** [Remnek, Alexandre](#)  
**To:** [Richter, John](#)  
**Subject:** FW: [Pretreatment] Successful in Requesting Extension and Alternative Protocols for Receiving Documents  
**Date:** Monday, March 23, 2020 1:46:00 PM

---

Alexandre Remnek  
Environmental Engineer  
Pretreatment Expert  
Unconventional Oil and Gas Regional Contact

NPDES Section  
Clean Water Regulatory Branch, Water Division  
Environmental Protection Agency, Region 2

290 Broadway  
New York, NY 10007

Work: 212-637-3774  
Fax: 212-637-3889  
E-mail: [remnek.alexandre@epa.gov](mailto:remnek.alexandre@epa.gov)

**From:** Pretreatment@groups.io <Pretreatment@groups.io> **On Behalf Of** sld\_boulder  
**Sent:** Monday, March 23, 2020 12:19 PM  
**To:** Pretreatment@groups.io  
**Subject:** [Pretreatment] Successful in Requesting Extension and Alternative Protocols for Receiving Documents

We requested from EPA and were successful in getting an extension for submitting the hard-copy documents for the Annual Report. We also indicated that all compliance documents will be allowed to be submitted/received as PDF of the original signed document with the original to be retained and submitted once we are all back to normal.

If a SIU is having a hardship collecting samples, obtaining analytical analyses, or obtaining the appropriate signatures, they should submit a hardship letter to us and we'll decide how to handle on a case by case basis.

We are in process of reaching out to SIUs to remind them of slug discharge prohibitions if they need to pause operations during this time. We reached out in particular to food processing manufacturers to remind them to let us know if they need to pause operations.

The permit requires SIUs to ensure their discharges meet compliance with the permit limits, including management of slug discharges and spills to protect the POTW. The City retains enforcement discretion to address permit non-compliance, for any situation.

-Sheri Duren  
City of Boulder Industrial Pretreatment  
[DurenS@BoulderColorado.gov](mailto:DurenS@BoulderColorado.gov)

---

Groups.io Links:

You receive all messages sent to this group.

[View/Reply Online \(#28684\)](#) | [Reply To Group](#) | [Reply To Sender](#) | [Mute This Topic](#) | [New Topic](#)

---

This was sent from the Pretreatment Coordinators group on group.io.

Please do not report it as spam to your ISP or IT group.

You subscribed, if you want to be removed, send an email to [Pretreatment+owner@groups.io](mailto:Pretreatment+owner@groups.io) and ask to be removed.

---

[Your Subscription](#) | [Contact Group Owner](#) | [Unsubscribe](#) [remnek.alexandre@epa.gov]



---

We Are Columbia

---

April 7, 2020

**BY U.S. MAIL TO:**

Chief, Water Programs Enforcement Branch  
Water Protection Division  
U.S Environmental Protection Agency, Region 4  
61 Forsyth Street, S.W.  
Atlanta, GA 30303

Mr. Randy Stewart  
SCDHEC-Bureau of Water  
Water Pollution Control Division  
2600 Bull Street  
Columbia, SC 29201

William Weinischke, Esquire  
Environmental Enforcement Section  
U.S. Department of Justice  
Box 7611 Ben Franklin Station  
Washington, DC 20044-7611  
Re: DOJ No. 90-5-1-1-09954

**AND BY ELECTRONIC MAIL TO:**

Nathan M .Haber, Esquire (habernm@dhec.sc.gov)  
William Weinischke, Esquire (bill.weinischke@usdoj.gov)  
Paul Schwartz, Esquire (Schwartz.paul@epa.gov)  
Beth Drake, Esquire (beth.drake@usdoj.gov)  
Carol DeMarco King, Esquire (King.carol@epa.gov)  
Richard Elliott (Elliott.richard@epa.gov)

Re: *The United States of America and State of South Carolina by and  
through the Department of Health and Environmental Control vs.  
The City of Columbia*  
Civil Action No. 3:13-2429-TLW  
DOJ Case Number 90-5-1-1-00954

Dear Sirs and Madams:

Pursuant to Section XI of the above-referenced Consent Decree and in accordance with guidance in the Memorandum regarding COVID-19 Implications for EPA's Enforcement and Compliance Assurance Program issued by EPA on March 26, 2020,

---

Teresa Wilson • City Manager  
1737 Main Street • P.O. Box 147 • Columbia, South Carolina 29217  
Office: 803.545.3026 • Fax: 803.545.3051 • Email: [tbwilson@columbiasc.net](mailto:tbwilson@columbiasc.net)





---

## We Are Columbia

---

the City of Columbia is providing notice that the COVID-19 pandemic is expected to result in delays in the performance of the City's obligations under the Consent Decree.

On March 13, 2020, the Governor of South Carolina declared a state of emergency based on a determination that COVID-19 posed an imminent public health emergency for the State. Since March 13, 2020, the Governor has issued ten additional executive orders, imposing emergency measures in response to the COVID-19 pandemic, including, but not limited to, prohibiting restaurants from providing on-premises dining, directing non-essential state workers to work from home, limiting public gatherings, closing public access to beaches and other public waters of this states, and ordering the closure of non-essential business. In these executive orders, the Governor has progressively broadened the definition of non-essential business. On April 3, 2020, the Governor issued an executive order requiring the closure of additional businesses, venues, facilities, services, and activities in the general category of retail stores.

On March 17, 2020, the Mayor and City Council declared a local state of emergency in the City. On March 26, 2020, the City Council enacted an emergency ordinance, which mandates that individuals stay at home except for work at or conducting business with establishments providing essential services. The emergency ordinance further required individuals to practice social distancing of six feet when working and conducting business in the City or participating in permissible outdoor recreational activities. The City implemented these and other measures based on the guidelines of the Center for Disease Control (CDC) and the South Carolina Department of Health and Environmental Control (SCDHEC). The City continues to evaluate measures to control the spread of infection under the guidance of the CDC and SCDHEC. Based on the current rate of spread of COVID-19 through the United States and within South Carolina, the City currently expects such measures will be necessary at least through the end of April.

The COVID-19 pandemic and the measures implemented to limit the spread of infection are expected to negatively impact the City's ability to perform its obligations under the Consent Decree in a number of ways. Obviously, the City's leadership is continuing to maintain City services and operations while anticipating potential worker shortages—both City staff and contractors. Even without such worker shortages, City wastewater improvement projects, including those required under the Consent Decree, may be hindered by the social distancing requirements

---

Teresa Wilson • City Manager

1737 Main Street • P.O. Box 147 • Columbia, South Carolina 29217

Office: 803.545.3026 • Fax: 803.545.3051 • Email: [tbwilson@columbiasc.net](mailto:tbwilson@columbiasc.net)





---

## We Are Columbia

---

for workers. Moreover, at least one contractor has already suspended work related to Consent Decree obligations due to concerns for employee safety during the COVID-19 pandemic. Any prolonged suspension or curtailment of contractor work due to COVID-19 could also affect the availability of contractors for Consent Decree work and for support of City utility operations for months and even years to come.

The COVID-19 pandemic is also expected to negatively impact the City's financial resources needed for utility operations and Consent Decree work. By letter dated March 14, 2020, the Governor directed the Office of Regulatory Staff to request that regulated utilities, including those not regulated by the utilities commission, not suspend or disconnect essential service for non-payment during the state of emergency. For many residents and businesses, unemployment and the interruption of business due to COVID-19 for even a short time could lead to financial vulnerability for many months. Indeed, some businesses, particularly restaurants and bars, may not be able to re-open once the COVID-19 restriction on operation are lifted. Finally, if the COVID-19 pandemic leads to a prolonged economic downturn, the City's ability to generate the revenue necessary to perform the Consent Decree obligations under the current schedule may be impacted by reduced revenues and the inability to impose rate increases on and recover delinquent service fees from residents and businesses.

Given the continuing state of emergency, the City will not be able to provide all of the information required within seven days under Paragraph 56 of the Consent Decree. Therefore, the City requests that this notice serve as the 72-hour initial notice and the written 7-day notice until the COVID-19 pandemic has been contained and normal operations resumed. At that time, the City will provide the a more complete description of the specific reasons for the delay, the anticipated Consent Decree obligations which will be delayed and the duration of such delay, all actions taken or to be taken in an effort to prevent or minimize the delays, and a schedule for implementation of any measures to be taken in an effort to prevent or mitigate the delays or the effect of the delays. Please be assured that the City takes its obligations pursuant to the Consent Decree very seriously, but must first direct all of its otherwise available resources to responding to the current state of emergency. At this time, the City has contingencies in place to ensure continued operation of the wastewater collection and treatment system and does not expect that the impacts of the COVID-19 pandemic will result in any endangerment to public health, welfare or the environment.

---

Teresa Wilson • City Manager

1737 Main Street • P.O. Box 147 • Columbia, South Carolina 29217

Office: 803.545.3026 • Fax: 803.545.3051 • Email: [tbwilson@columbiasc.net](mailto:tbwilson@columbiasc.net)



---

We Are Columbia

---

The City appreciates your consideration of this force majeure notice and the request to provide additional information required under Paragraph 56 of the Consent Decree once the COVID-19 pandemic is contained and the City is better able to fully assess the impacts on its performance of its Consent Decree obligations. If additional information is needed in support of this request, please do not hesitate to contact me.

Sincerely,

Teresa B. Wilson  
City Manager



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 4

ATLANTA FEDERAL CENTER  
61 FORSYTH STREET  
ATLANTA, GEORGIA 30303-8960

**VIA EMAIL**

APR 30, 2020

Teresa B. Wilson  
City Manager  
PO Box 147  
Columbia, South Carolina 29217  
email: tbwilson@columbiasc.net

Re: United States of America and State of South Carolina by and through Department of Health and Environmental Control vs. The City of Columbia, Civil Action No. 3:13-2429-TLW  
DOJ Case Number 90-5-1-1-00954; COVID-19 Related *Force Majeure* Notification

Dear Ms. Wilson:

The U.S. Environmental Protection Agency, the U.S. Department of Justice, and the South Carolina Department of Health and Environmental Control (DHEC) are in receipt of the City of Columbia's April 7, 2020 letter issued pursuant to Section XI of the above-referenced Consent Decree (CD). The letter provides notice of a *force majeure* event that may cause a delay, or impediment to performance, in complying with certain provisions of the CD, including CD provisions requiring completion of wastewater improvement projects. The letter also states that public health emergency-related worker unavailability and financial impacts could potentially affect the City's ability to timely meet its CD obligations. The EPA has consulted with DOJ and DHEC in preparing this response.

Your letter cites and was submitted in accordance with the EPA's March 26, 2020 temporary "COVID-19 Implications for EPA's Enforcement and Compliance Assurance Program" Policy (Policy). This Policy addresses the EPA's enforcement of environmental legal obligations during this time. As provided in Section I.C of the Policy, claims of an inability to comply with the terms of a judicial consent decree are properly handled pursuant to the consent decree's *force majeure* provisions. Paragraph 55 of the CD requires the City to "exercise best efforts to fulfill" the obligations of the CD, including the use of best efforts to anticipate any potential *force majeure* event. Further, these efforts should "address the effects of any such event: (a) as it is occurring and (b) after it has occurred to prevent or minimize any resulting delay to the greatest extent possible."

The City's April 7, 2020, letter specifically asserts an actual *force majeure* event based on the current COVID-19 public health emergency's impacts that have disrupted the availability of contractors and workers to carry out CD obligations and have adversely impacted the City's financial condition. The City also asserts in its letter that because COVID-19 and its effects are an ongoing state of emergency, the City cannot currently address all of the information required to be included in a notice pursuant to Paragraph 56 of the CD, including a more complete description of the specific reasons for the delay, an identification of the obligations that will be delayed, the anticipated duration of the delay, and steps that could be taken to minimize the delay.

The City does indicate in the letter that it does not expect that the impacts from the COVID-19 public health emergency on CD implementation will result in any endangerment to public health, welfare or the



environment. The City also indicates that it will provide more complete information when the COVID-19 public health emergency has been contained and normal operations have resumed.

Because of the uncertainty surrounding the COVID-19 public health emergency, we understand that the City may not have complete information at this time, but it must provide additional information in accordance with the CD as more information becomes available. Information required by Paragraph 56 of the CD should be provided when the City is able to do so, and this will not necessarily mean waiting until “the COVID-19 pandemic has been contained and normal operations have resumed,” as suggested by your letter.

Because the City’s current notice remains speculative as to the impact COVID-19 may have on CD obligations at this point, the EPA and DHEC must also defer judgment on this aspect of the City’s *force majeure* claim at this time. The decision to defer judgment on the City’s claims should not be construed as acceptance of any potential noncompliance covered by the CD. For a *force majeure* claim to be ripe for decision, the City should, in accordance with Paragraph 56 of the CD, provide the following: an explanation and description of the reasons for the delay; the anticipated duration of the delay; all actions taken or to be taken to prevent or minimize the delay; a schedule for implementation of any measures to be taken to prevent or mitigate the delay or the effect of the delay; the rationale for attributing such delay to a *force majeure* event; and a statement as to whether such event may cause or contribute to an endangerment to public health, welfare, or the environment.

In addition to compliance with the express provisions of the CD, the City is encouraged to maintain an open and continuing dialogue with the EPA, DOJ, and DHEC. This will serve to protect human health and the environment, minimize potential misunderstandings, and facilitate timely and appropriate decision-making as this situation unfolds. We suggest at a minimum that the parties either plan on monthly written updates from the City or schedule regular calls to discuss these ongoing issues on a monthly basis. We request that you provide your views on what form these regular communications should take.

Should you have any questions regarding the above or any aspect of this matter, please do not hesitate to contact Mr. Richard Elliot of my staff at (404) 562-8691 or via email at [elliott.richard@epa.gov](mailto:elliott.richard@epa.gov).

Sincerely,

CAROL KEMKER

Digitally signed by CAROL  
KEMKER  
Date: 2020.05.19 10:35:06 -04'00'

Carol L. Kemker

Director

Enforcement and Compliance Assurance Division

cc: Joan W. Hartley, Nexsen Pruet ([JHartley@nexsenpruet.com](mailto:JHartley@nexsenpruet.com))  
Tommy Lavender, Nexsen Pruet ([TLavender@nexsenpruet.com](mailto:TLavender@nexsenpruet.com))  
Stephen Hightower, SC DHEC ([HIGHTOSP@sc.dhec.gov](mailto:HIGHTOSP@sc.dhec.gov))  
William W. Weinischke, USDOJ ([Bill.Weinischke@usdoj.gov](mailto:Bill.Weinischke@usdoj.gov))  
Robert D. Fentress, USEPA ([Fentress.Robert@epa.gov](mailto:Fentress.Robert@epa.gov))

**Melcher, John**

---

**Subject:** FW: Haverhill, MA NPDES Permit MA 0101621 - Annual CSO Report Extension

---

**From:** Robert Ward <[rward@haverhillwater.com](mailto:rward@haverhillwater.com)>

**Sent:** Friday, March 27, 2020 8:32 AM

**To:** Pastrana-Del Valle, Solanch <[pastrana-del-valle.solanch@epa.gov](mailto:pastrana-del-valle.solanch@epa.gov)>

**Subject:** Haverhill, MA NPDES Permit MA 0101621 - Annual CSO Report Extension

Dear Ms. Pastrana-Del Valle:

On behalf of the City of Haverhill, I am requesting a time extension to submit our annual CSO report. Our NPDES permit requires the report to be submitted by March 31<sup>st</sup>. Over the past few weeks, the staff has been focusing on efforts dealing with the COVID 19 virus.

The annual report reflects activities for the calendar year 2019, and extending the due date will not change the content of the report, nor will it change the fact that the City was in full compliance with our NPDES permit relative to CSO requirements for 2019.

The additional time will allow us to ensure a more comprehensive and accurate report.

If you need more information, please call me or email me.

Sincerely,

Robert E. Ward  
Deputy DPW Director

City of Haverhill | 40 South Porter Street | Haverhill, MA 01835  
Tel. (978) 374-2382 | Fax (978) 521-4083  
Email: [rward@haverhillwater.com](mailto:rward@haverhillwater.com)

## Melcher, John

---

**From:** Koopman, Douglas  
**Sent:** Thursday, April 02, 2020 3:19 PM  
**To:** Robert Ward  
**Cc:** Pastrana-Del Valle, Solanch; Susannah.king@state.ma.us; Langley, Lealdon (DEP); Brander, Kevin (DEP)  
**Subject:** response to your request for delay in submitting CSO report

Mr. Ward

Thank for your email requesting guidance with respect to submitting your annual CSO Report under your NPDES permit.

In response to noncompliance related to the COVID-19 pandemic, Assistant EPA Administrator for Enforcement and Compliance Assurance Susan Parker Bodine has announced the exercise of enforcement discretion for certain environmental legal obligations. That memo, accessible at the link below, establishes specific conditions to be met, if you are unable to meet those obligations identified in your NPDES permit.

<https://www.epa.gov/sites/production/files/2020-03/documents/oecamemooncovid19implications.pdf>

As indicated in the Bodine memo, entities should make every effort to comply with their NPDES permits. However, if for reasons related to COVID-19, you are not able to timely submit any reports required by your permit you should document the specific reasons for the delay and submit the report as soon as possible. Thank you for indicating to me that you expect to be able to submit the report by April 21, 2020.

Details related to NPDES Reporting in Response to the COVID-19 Pandemic can be found at:

<https://netdmr.zendesk.com/hc/en-us/articles/360041746691-Covid-19-Information-Page>

Feel free to contact me or Jeff Kopf, Senior Enforcement Counsel, at (617) 918-1796 if you have questions on how this policy relates to your circumstances.

Doug Koopman

Douglas Koopman  
(617)918-1747  
[Koopman.Douglas@epa.gov](mailto:Koopman.Douglas@epa.gov)  
EPA Region I  
5 Post Office Square, Suite 100  
Mail code 04-03  
Boston MA, 02109-3912

Department of Public Works



200 South President Street  
Post Office Box 17  
Jackson, Mississippi 39205-0017

March 24, 2020

**By Certified Mail and Email**

Chief, Environmental Enforcement Section  
Environment and Natural Resources Division  
U.S. Department of Justice  
Box 7611 Ben Franklin Station  
Washington, DC 20044-7611  
Re: DOJ No. 90-5-1-1-09841

Brad Ammons  
Environmental Engineer  
Municipal & Industrial Enforcement Section  
U.W. EPA Region 4  
61 Forsyth St., S.W.  
Atlanta, GA 30303

Karl Fingerhood  
Environmental Enforcement Section  
U.S. Department of Justice  
Box 7611 Ben Franklin Station  
Washington, DC 20044-7611

Chris Sanders  
Mississippi Department of Environmental  
Quality  
Office of Pollution Control  
P.O. Box 2261  
Jackson, MS 39225-2261

RE: *US v. City of Jackson*, Case No. 3:12-cv-790 TSL-MTP  
Consent Decree – Notice of Force Majeure

Dear Gentleman,

On March 11, 2020, the World Health Organization declared COVID-19 a global pandemic. According to the CDC, COVID-19 represents a Public Health Emergency. On March 13, 2020, the President of the United States declared the outbreak a national emergency. As such, the COVID-1 outbreak constitutes a Force Majeure event under Section XI of the Consent Decree. Although the impacts and spread of COVID-19 are still evolving and impacts on City of Jackson's operations are still being evaluated, the City of Jackson has sufficient information to inform EPA and MDEQ of the impact of this Force Majeure event on the City of Jackson's compliance with the Fats, Oil and Grease Program. Due to restricted access and closure of the FSEs and to protect the health of the public, restaurant owners and employees and the City of Jackson's field inspectors, the City of Jackson has suspended FOG inspections at FSEs and delays are anticipated until the national emergency ends and the public health risk is eliminated. Further, as the City learns more about the impacts of COVID-19 on the City of Jackson's Consent Decree compliance obligations, additional Force Majeure notifications may be provided to supplement this letter.

This letter is provided to satisfy Paragraph 74's notice obligations to provide oral or electronic notification within 72 hours and written notification within 7 days thereafter. Such notice is

March 24, 2020

Page 2

required to provide a written explanation of the reasons for the delay, the anticipated duration of the delay, all actions taken or to be taken to prevent or minimize the delay, a schedule of implementation of any measures to be taken to prevent or mitigate the delay, the City's rationale for attributing such delay to a force majeure event and a statement as to whether, in the opinion of the City, such event may cause an endangerment to public health, welfare or the environment.

As stated above, the reason for the delay is the COVID-19 pandemic and national emergency, a Force Majeure event that prevents performance of FSE inspections to protect public health and the health of the public, restaurant owners and their employees and the City of Jackson's field inspectors. As COVID-19 and its effects are unpredictable and outside our control, the City of Jackson cannot predict the anticipated duration of the delay. Inspections will resume when the national emergency is over and the COVID-19 health risk is eliminated. The steps to be taken to minimize the delay are unknown at this time. Finally, in the opinion of the City, while the delay in performance of FSE inspections will not contribute to an endangerment to public health, welfare and the environment, continued performance of the inspections could contribute to an endangerment to public health and welfare.

Please contact me directly ([rmiller@jacksonms.gov](mailto:rmiller@jacksonms.gov); (601) 960-1178) should you have any questions.

I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering such information, the information submitted is, to the best of my knowledge and belief, true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

Sincerely,

A handwritten signature in blue ink that reads "Robert K. Miller" with a small "cw" superscript at the end.

Robert K. Miller

Director, Department of Public Works

Cc: Chokwe Antar Lumumba, Mayor, City of Jackson  
Timothy Howard, City Attorney, City of Jackson  
Terry Williamson, Legal Counsel, City of Jackson  
John Pruss, Program Management Director, Burns & McDonnell  
Susan Richardson, Legal Counsel, Kilpatrick Townsend & Stockton



## Melcher, John

---

**Subject:** FW: CMOM Annual Reporting amid COVID-19

---

**From:** Pastrana-Del Valle, Solanch  
**Sent:** Thursday, March 19, 2020 1:46 PM  
**To:** Bouvier, Jeremy <[jbouvier@manchesternh.gov](mailto:jbouvier@manchesternh.gov)>  
**Cc:** 'NANCY.LESIEUR@DES.NH.GOV' <[NANCY.LESIEUR@DES.NH.GOV](mailto:NANCY.LESIEUR@DES.NH.GOV)>; McNeill, Fred <[fmcneill@manchesternh.gov](mailto:fmcneill@manchesternh.gov)>; Ptak, Teresa <[Teresa.Ptak@des.nh.gov](mailto:Teresa.Ptak@des.nh.gov)>  
**Subject:** RE: CMOM Annual Reporting amid COVID-19

Dear Mr. Bouvier,

Thank you for letting us know that components of the City's annual CMOM reporting may be incomplete or delayed under current circumstances. When you submit your Annual CMOM Report, please note any portions that could not be timely completed due to limited City staff availability. Please let me and Teresa Ptak from NH DES know if any other compliance issues arise with regard to specific CWA requirements.

We are not aware of a general relaxation of reporting requirements.

Best,

***Solanch S. Pastrana-Del Valle***

Enforcement and Compliance Assurance Division  
U.S. EPA New England – Region 1 (Mail Code: 04-4)  
5 Post Office Square, Boston, MA 02109-3912  
(617) 918-1746

---

**From:** Bouvier, Jeremy <[jbouvier@manchesternh.gov](mailto:jbouvier@manchesternh.gov)>  
**Sent:** Wednesday, March 18, 2020 11:37 AM  
**To:** Pastrana-Del Valle, Solanch <[pastrana-del-valle.solanch@epa.gov](mailto:pastrana-del-valle.solanch@epa.gov)>  
**Cc:** 'NANCY.LESIEUR@DES.NH.GOV' <[NANCY.LESIEUR@DES.NH.GOV](mailto:NANCY.LESIEUR@DES.NH.GOV)>; McNeill, Fred <[fmcneill@manchesternh.gov](mailto:fmcneill@manchesternh.gov)>  
**Subject:** CMOM Annual Reporting amid COVID-19

Good morning Solanch,

We are in the process of preparing our Annual CMOM Report for submission. Due to limited staff at the City, there are going to be certain portions of the report that may not be able to be completed by the due date. My question is, is EPA relaxing any of the reporting requirements for this or other programs that municipalities are managing (IPP, MSGP, etc) in light of all that is going on?

Thank you in advance for any guidance you might be able to provide.

Jeremy

**Jeremy D. Bouvier, PE**

City of Manchester

Department of Public Works  
Environmental Protection Division  
300 Winston Street  
Manchester, NH 03103  
Ph: (603) 665-6899  
Fax: (603) 628-6234  
Cell: (603) 682-1103  
Email: [jbouvier@manchesternh.gov](mailto:jbouvier@manchesternh.gov)

---

*The Right-To-Know Law (RSA 91-A) provides that most e-mail communications, to or from City employees and City volunteers regarding the business of the City of Manchester, are government records available to the public upon request. Therefore, this email communication may be subject to public disclosure.*

## Melcher, John

---

**Subject:** FW: NPDES permit annual wastewater collection system O&M reporting - City of North Adams MA (Permit No. MA0100510)

---

**From:** David J. Popielarczyk <[DJPopielarczyk@tighebond.com](mailto:DJPopielarczyk@tighebond.com)>

**Sent:** Sunday, March 22, 2020 10:22 AM

**To:** Barden, Michele <[Barden.Michele@epa.gov](mailto:Barden.Michele@epa.gov)>

**Cc:** Timothy Lescarbeau, Commissioner of Public Services <[tllescarbeau@northadams-ma.gov](mailto:tllescarbeau@northadams-ma.gov)>; Dana Huff <[DCHuff@tighebond.com](mailto:DCHuff@tighebond.com)>

**Subject:** NPDES permit annual wastewater collection system O&M reporting - City of North Adams MA (Permit No. MA0100510)

Michele:

We are providing the City of North Adams with assistance in preparing an annual report related to the operation and maintenance of their wastewater collection system. North Adams is a co-permittee to the Hoosac Water Quality District's (HWQD's) NPDES permit for its water pollution control facility (NPDES Permit No. MA0100510). The annual report is due March 31<sup>st</sup>. One item that we need to complete the report is flow data from HWQD. Due to staffing issues related to the corona virus, HWQD has indicated that they may not be able to provide the flow data we need to complete the report until after March 31<sup>st</sup>.

We request direction from EPA on how we should proceed with completion of the annual report. We can:

1. Submit the report once the wastewater flow data from HWQD is provided, which may be after March 31<sup>st</sup>.
2. Submit the report without the flow data and amend the report at a later date when the flow data is received.

Any input you can provide would be appreciated. Also, do we need to obtain concurrence with MassDEP as well on which approach is used?

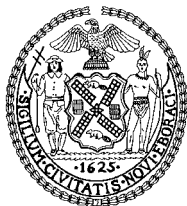
Thank you.

David

**David J. Popielarczyk, PE** | Principal Engineer/Associate

**Tighe&Bond** | 53 Southampton Road | Westfield, MA 01085 | 413.572.3233

[www.tighebond.com](http://www.tighebond.com) | Follow us on: [Twitter](#) [Facebook](#) [LinkedIn](#)



JAMES E. JOHNSON  
Corporation Counsel

THE CITY OF NEW YORK  
**LAW DEPARTMENT**  
100 CHURCH STREET  
NEW YORK, NY 10007-2601

TESS C. DERNBACH  
(212) 356-2320  
FAX: (212) 356-2069  
tdembac@law.nyc.gov

April 2, 2020

**Via Electronic Mail**

To the United States:

United States Attorney's Office  
Eastern District of New York  
Civil Division  
271 Cadman Plaza East  
Brooklyn, New York 11201  
USAO No.: 2011V00094

Chief, Environmental Enforcement Section  
Environment and Natural Resources Division  
U.S. Department of Justice  
Box 7611 Ben Franklin Station  
Washington, D.C. 20044-7611  
Re: DOJ No.: 90-5-1-1-10223/1

U.S. Environmental Protection Agency  
Region 2  
Water Compliance Branch  
Attn: Nicole Kraft  
20th Floor  
290 Broadway  
New York, New York 10007

Re: Force Majeure Notice for the Hillview Consent Decree and Judgment  
(Civil Action No.: 19-1519)  
Catskill/Delaware System, PWSID: NY7003493  
Hillview Reservoir

Dear Deborah, Gavin, *et al.*:

I hope this letter finds you well. On March 13, 2020, the City provided the United States and New York State (the "State") with initial, 72-hour, force majeure notice via email, in accordance

To the State/NYSDOH:

Kerry-Ann Lawrence  
New York State Department of Health  
Bureau of Litigation  
Corning Tower, Room 2438  
Empire State Plaza  
Albany, NY 12237

New York State Department of Health  
Bureau of Water Supply Protection  
Attn: Patrick Palmer  
Corning Tower, Room 1110  
Empire State Plaza  
Albany, NY 12237

New York State Office of the Attorney General  
Environmental Protection Bureau  
Attn: Gavin McCabe  
28 Liberty Street, 19th Floor  
New York, NY 10005

with Section X, Paragraph 123 of the Hillview Consent Decree & Judgment (the “Consent Decree”), which stated that the City’s performance of its obligations under the Consent Decree may be delayed in light of the novel coronavirus disease 2019 (COVID-19) outbreak in New York City and New York State (*see Exhibit “A”*). The City hereby submits this notice letter to provide the United States and the State with an update on the status of the City’s Hillview Consent Decree work and obligations, in light of the ongoing COVID-19 crisis, and to comply with the 20-day force majeure notice requirement set forth in Section X, Paragraph 123 of the Consent Decree.

Section X, Paragraph 123 requires, within 20 days of an initial 72-hour force majeure notice, that the City:

*“...provide in writing to the United States and the State an explanation and description of the reasons for the delay; the anticipated duration of the delay; all actions taken or to be taken to prevent or minimize the delay; a schedule for implementation of any measures to be taken to prevent or mitigate the delay or the effect of the delay; the City’s rationale for attributing such delay to a force majeure event if it intends to assert such a claim; and a statement as to whether, in the opinion of the City, such event may cause or contribute to an endangerment to public health, welfare or the environment. The City shall include with any notice all available documentation supporting the claim that the delay was attributable to a force majeure. ...”*

Below is a list of the Consent Decree obligations that the City has identified to date that are potentially at risk for delayed compliance as a result of the ongoing COVID-19 crisis. Thereafter is an explanation of the City’s position that the COVID-19 pandemic constitutes a force majeure event subject to the terms of Section X of the Consent Decree, and a discussion of the identified, potential delays in accordance with Paragraph 123’s requirements as enumerated above.

Please note, the delays identified, and the corresponding information provided below are current as of the date of this letter. However, as you are aware, the COVID-19 pandemic is ever-evolving, and the extent and conclusion of this crisis is very much unknown at this time. The City is taking all practicable measures to anticipate, identify, and mitigate potential compliance risks in real time; however, due to the tremendous amount of uncertainty associated with COVID-19 at this time, the City anticipates that the list of delays and corresponding information may evolve and need to be supplemented in the coming weeks and months. As such, the City reserves the right to further exercise force majeure notice rights pursuant to Section X, Paragraph 123 for other Consent Decree obligations that may become at risk for delay in the future as a result of the ongoing nature of the COVID-19 crisis.

In addition, the City suggests the development and implementation of an active, ongoing force majeure procedure that will enable the City to update the United States and the State on a reoccurring basis, and if/when necessary, supplement the list below of potential delays associated with the COVID-19 force majeure event, until such time that this crisis has an identifiable end. This will allow consistent, up-to-date communication among the City, the United States and the State, as issues are resolved or become newly apparent in the months to come.

The City is further requesting a conference call with United States and the State in the immediate future to further discuss this request, as well as the information contained below.

### **Potential Delays Identified as of April 2, 2020**

As of the date of this letter, the City has identified potential compliance delays to the following Consent Decree obligations as a result of the ongoing COVID-19 force majeure event:

1. **Section VI.A.14**, which states, “By October 31, 2022, complete and submit to the United States and the State the Draft Environmental Impact Statement (“EIS”) and commence the Final EIS procedure for the KEC. The DEIS will include a list of all local, State, and federal permits and approvals and will identify all property acquisition needed for construction of the KEC at all properties under consideration by the City for implementation of the KEC. If other permits, approvals or land acquisition needs are identified by the City at a later date, the City shall have a duty to supplement its notification to the United States and the State in its next quarterly report to the United States.”
2. **Section VI.A.15**, which states, “By December 31, 2022, issue public notice of hearing on the Draft EIS for the KEC.”
3. **Section VI.A.18**, which states, “By October 31, 2023, complete and submit to the United States and the State the Final EIS for the KEC and notify the United States of the City’s determination as to whether the schedule for construction of the KEC can be accelerated. If the KEC construction schedule can be accelerated, the City shall submit proposed accelerated milestone dates to the United States and the State in accordance with Section VI.D. below.”
4. **Section VI.B.34**, which states, “By May 31, 2021, complete and submit to the United States and the State the Preliminary Design for the HRI and commence the Final Design for the HRI.”
5. **Section VI.B.37**, which states, “By December 31, 2022, complete and submit to EPA and NYSDOH, for approval by NYSDOH, the Final Design for the first construction contract for the HRI;” and
6. **Section VI.C.44**, which states, “By August 31, 2024, complete Hillview Cover - Facility Planning report and submit Facility Planning report to the United States and the State.”

The Consent Decree obligations above are those that the City has presently identified as potentially at risk for delay to date stemming from the COVID-19 crisis. However, please note, the City is not able to determine at this time whether this list is fully exhaustive due to the uncertain, and ever-changing nature of COVID-19. As such, this list is complete only as of today, and the City will further exercise its force majeure notice rights, as necessary, and pursuant to Section X, Paragraph 123, for other Consent Decree obligations that may become at risk for delay in the future in light of the ongoing nature of the COVID-19 crisis. In addition, please note that the City cannot determine at this time whether any actual compliance delays will occur to the above-listed obligations. The City is exercising best efforts to anticipate, mitigate and prevent any compliance delays to the best extent practicable under the circumstances.

### **Explanation and description of the reasons for delay**

Pursuant to Section X, Paragraph 122 of the Consent Decree, a force majeure event is defined as follows:

*“... any event arising from causes beyond the control of the City, of any entity controlled by the City, or of the City’s contractors, that delays or prevents the performance of any*

*obligation under this Consent Judgment despite the City's best efforts to fulfill the obligation...."*

On March 7, 2020, New York State Governor Andrew Cuomo declared a state of emergency in the State of New York through Executive Order No. 202 (*see Exhibit "B"*). On March 12, 2020, New York City Mayor Bill de Blasio declared a state of emergency in the City of New York through Emergency Executive Order No. 98 (*see Exhibit "C"*). On March 13, 2020, President Trump declared the ongoing COVID-19 pandemic of sufficient severity and magnitude to warrant an emergency declaration for all states, tribes, territories, and the District of Columbia pursuant to section 501 (b) of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121-5207 (*see Exhibit "D"*). As of the date hereof, each of the above-mentioned executive orders have been extended and/or supplemented.

The COVID-19 pandemic is an unprecedented global public health crisis, which qualifies as an "Act of God" that emerged from causes entirely beyond the control of the City, of any entity controlled by the City, or of the City's contractors. While the COVID-19 pandemic has had, and continues to have, a devastating impact on human health and life around the globe, with significant repercussions for businesses worldwide, the City of New York has been hit particularly hard by this outbreak with more than 52,000 cases reported as of today.

To curtail the loss of human lives and prevent the collapse of the healthcare system, the City, State and federal governments have all implemented drastic emergency measures in response to COVID-19. These measures have substantially impacted, both directly and indirectly, every aspect of daily human life, including but not limited to professional, governmental, economic and commercial relations and operations. As of today, extreme social distancing protocols have been placed into effect State-wide to protect public health and prevent the further spread of COVID-19. In addition, access to the Hillview Reservoir site has been restricted to critical operations personnel only for continuity of operations purposes.

Cumulatively, the above-mentioned actions have temporarily delayed the City's progress towards the Consent Decree's obligations.

Site restrictions and social distancing requirements make it difficult for the City to conduct environmental reviews, as actual current conditions may not represent the reasonable baseline for purposes of reliable environmental analyses. In particular, Milestones 14, 15 and 18 require such environmental analyses, which ordinarily include, for example, traffic surveys and counts. If conducted today (or at any point under the present social distancing restrictions), those surveys and counts would not be reflective of true conditions, and as such cannot serve as reasonable baseline conditions for evaluating environmental impacts of the proposed KEC project. The City is endeavoring to find solutions to these challenges in connection with environmental reviews for a variety of important public projects, but recognizes that this may lead to delays in these environmental reviews.

Site restrictions are also delaying engineering team analyses necessary for HRI Preliminary Design (Milestone 34), which if delayed extensively, may subsequently having a compounded effect on timely compliance with Milestone 37's deadline. Lastly, modeling analyses essential to Hillview Cover facility planning (Milestone 44), are only accessible to DEP personnel on computers located in LeFrak City, Queens. At this time, access to that DEP office is extremely restricted to protect the health and safety of DEP employees.



While the City is working to anticipate, prevent and mitigate these delays to the best extent possible under the circumstances, it is possible such delays will hinder the City's timely compliance with the deadlines set forth in the Consent Order.

#### **The anticipated duration of the delay**

The City is exercising best efforts to fully avoid all potential delays identified above. However, due to the unknown duration, extent and severity of COVID-19 at this time, it is not possible to anticipate the duration of any potential delay in a precise way. As such, the City requests a conference call with the United States and the State in the immediate future to further discuss and address this matter more fully.

#### **All actions taken or to be taken to prevent or minimize the delay**

The City is exercising best efforts to timely fulfill its obligations under the Consent Decree despite this unprecedented crisis. DEP is working with the existing KEC and HRI consulting teams to ensure that any site work conducted during this time pursuant to an essential exemption is done so safely, and with minimal risk to employees and essential DEP operations. City employees and consultants also are working from home to complete tasks remotely wherever possible. DEP is also currently assessing existing environmental site data for KEC to determine whether and if such data is accurate and current enough to be reflective of "normal" baseline environmental conditions. To mitigate and prevent delays to Milestones 34 and 37, DEP is rescheduling, to the extent possible, engineering site assessments that support design decisions. Lastly, the City's Hillview legal team is in constant contact with the respective DEP project teams for KEC, HRI and the Hillview Cover to facilitate essential communications and decisions, and to ensure Consent Order obligations continue moving forward to the extent possible under the circumstances.

Upon restoration of normal operations and the conclusion of this COVID-19 force majeure crisis, the City will exercise best efforts to recoup lost time and avoid or mitigate delays where possible.

#### **A schedule for implementation of any measures to be taken to prevent or mitigate the delay or the effect of the delay**

Due to the unknown duration, extent and severity of COVID-19 infections within the City and State at this time, it is not possible to predict or anticipate the duration of the delay or prepare a schedule for implementation of measures to prevent or mitigate the delay(s) or effect(s) stemming therefrom. The City requests a conference call with the United States and the State in the immediate future to further discuss and address this matter more fully.

#### **The City's rationale for attributing such delay to a force majeure event**

The COVID-19 crisis has resulted in a plethora of governmental restrictions and social distancing measures that are intended to reduce population density and restrict common aspects of everyday life for public health and safety. While these measures are necessary to control and prevent the further spread of COVID-19 and save lives, they simultaneously impact the City's ability to conduct certain activities necessary to support and timely complete those Milestones identified above.

**A statement as to whether, in the opinion of the City, such event may cause or contribute to an endangerment to public health, welfare or the environment.**

The COVID-19 outbreak is an endangerment to public health and welfare. It has been uniformly and unequivocally identified as a public health crisis by the City of New York, the State of New York, the United States and the international community.

**List of appended, available documentation supporting the claim that the delay was attributable to a force majeure**

- **Exhibit A** – Force Majeure notice email from the City on March 13, 2020.
- **Exhibit B** – State of New York Executive Order No. 202.
- **Exhibit C** – City of New York Emergency Executive Order 98
- **Exhibit D** - President Trump's Emergency Declaration pursuant to Section 501 (b) of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121-5207.

As such, the City submits this 20-day force majeure notice to the United States and New York State in accordance with Section X, Paragraph 123. Should you have any questions, please contact Tess Dernbach, Assistant Corporation Counsel, at (646) 951-2614.

Sincerely,

/s/ Tess Dernbach  
Tess Dernbach,  
Assistant Corporation Counsel  
New York City Corporation Counsel

c: Casey McCormack, DEP Legal  
Dan Mulvihill, DEP Legal  
Hilary Meltzer, New York City Corporation Counsel

**Exhibit A**

Force Majeure notice email from the City on March 13, 2020.

**From:** [Dernbach, Tess \(Law\)](#)  
**To:** ["Zwany, Deborah \(USANYE\) <Deborah.Zwany@usdoj.gov> \(Deborah.Zwany@usdoj.gov\)"; ""McCabe, Gavin" \(Gavin.McCabe@ag.ny.gov\)"](#)  
**Cc:** [McCormack, Casey](#); [Mulvihill, Daniel](#); [Meltzer, Hilary \(Law\)](#)  
**Subject:** Hillview - Force Majeure Notice  
**Date:** Friday, March 13, 2020 4:51:27 PM

---

Dear Deborah and Gavin,

I hope you are both well and staying safe.

In accordance with Section X, Paragraph 123 of the Hillview Consent Decree & Judgment, the City is giving general force majeure notice to the United States and the State that the City's performance of its obligations under the Hillview Consent Decree & Judgment may be delayed in light of the coronavirus disease 2019 (COVID-19) outbreak that is rapidly unfolding across New York City and New York State at this time.

The City is working very hard to prevent, to the greatest extent possible, any COVID-19 related Consent Order compliance delays. However, given the nature of the situation and level of uncertainty surrounding COVID-19 at this time, one or more delays may occur that are entirely out of the control of the City.

The City will prepare and deliver a more detailed report to the United States and the State in accordance with Paragraph 123's requirements on or before Thursday April 2, 2020, which is 20 calendar days from today. This report will be as detailed as possible given the COVID-19 circumstances as they exist at that time.

Thank you for your understanding in this time of emergency. Should you have any questions please do not hesitate to contact me. Be well.

Regards,

**Tess Dernbach**

Assistant Corporation Counsel  
Environmental Law Division  
New York City Law Department  
100 Church Street  
New York, New York 10007  
(o) 212-356-2320  
(c) 646-951-2614

**Exhibit B**

State of New York Executive Order No. 202.



# State of New York

## Executive Chamber

No. 202

### EXECUTIVE ORDER

#### Declaring a Disaster Emergency in the State of New York

**WHEREAS**, on January 30, 2020, the World Health Organization designated the novel coronavirus, COVID-19, outbreak as a Public Health Emergency of International Concern;

**WHEREAS**, on January 31, 2020, United States Health and Human Services Secretary Alex M. Azar II declared a public health emergency for the entire United States to aid the nation's healthcare community in responding to COVID-19;

**WHEREAS**, both travel-related cases and community contact transmission of COVID-19 have been documented in New York State and more are expected to continue; and

**WHEREAS**, New York State is addressing the threat that COVID-19 poses to the health and welfare of its residents and visitors.

**NOW, THEREFORE**, I, Andrew M. Cuomo, Governor of the State of New York, by virtue of the authority vested in me by the Constitution and the Laws of the State of New York, hereby find, pursuant to Section 28 of Article 2-B of the Executive Law, that a disaster is impending in New York State, for which the affected local governments are unable to respond adequately, and I do hereby declare a State disaster emergency for the entire State of New York. This Executive Order shall be in effect until September 7, 2020; and

**IN ADDITION**, this declaration satisfies the requirements of 49 C.F.R. 390.23(a)(1)(A), which provides relief from Parts 390 through 399 of the Federal Motor Carrier Safety Regulations (FMCSR). Such relief from the FMCSR is necessary to ensure that crews are available as needed.

**FURTHER**, pursuant to Section 29 of Article 2-B of the Executive Law, I direct the implementation of the State Comprehensive Emergency Management Plan and authorize all necessary State agencies to take appropriate action to assist local governments and individuals in containing, preparing for, responding to and recovering from this state disaster emergency, to protect state and local property, and to provide such other assistance as is necessary to protect public health, welfare, and safety.

**IN ADDITION**, by virtue of the authority vested in me by Section 29-a of Article 2-B of the Executive Law to temporarily suspend or modify any statute, local law, ordinance, order, rule, or regulation, or parts thereof, of any agency during a State disaster emergency, if compliance with such statute, local law, ordinance, order, rule, or regulation would prevent, hinder, or delay action necessary to cope with the disaster emergency or if necessary to assist or aid in coping with such disaster, I hereby temporarily suspend or modify, for the period from the date of this Executive Order through April 6, 2020 the following:

Section 112 of the State Finance Law, to the extent consistent with Article V, Section 1 of the State Constitution, and to the extent necessary to add additional work, sites, and time to State contracts or to award emergency contracts, including but not limited to emergency contracts or leases for relocation and support of State operations under Section 3 of the Public Buildings Law; or emergency contracts under Section 9 of the Public Buildings Law; or emergency contracts for professional services under Section 136-a of the State Finance Law; or emergency contracts for commodities, services, and technology under Section 163 of the State Finance Law; or design-build or best value contracts under and Part F of Chapter 60 of the Laws of 2015 and Part RRR of Chapter 59 of the Laws of 2017; or emergency contracts for purchases of commodities, services, and technology through any federal GSA schedules, federal 1122 programs, or other state, regional, local, multi-jurisdictional, or cooperative contract vehicles;

Section 163 of the State Finance Law and Article 4-C of the Economic Development Law, to the extent necessary to allow the purchase of necessary commodities, services, technology, and materials without following the standard notice and procurement processes;

Section 97-G of the State Finance Law, to the extent necessary to purchase food, supplies, services, and equipment or furnish or provide various centralized services, including but not limited to, building design and construction services to assist affected local governments, individuals, and other non-State entities in responding to and recovering from the disaster emergency;

Section 359-a, Section 2879, and 2879-a of the Public Authorities Law to the extent necessary to purchase necessary goods and services without following the standard procurement processes;

Sections 375, 385 and 401 of the Vehicle and Traffic Law to the extent that exemption for vehicles validly registered in other jurisdictions from vehicle registration, equipment and dimension requirements is necessary to assist in preparedness and response to the COVID-19 outbreak;

Sections 6521 and 6902 of the Education Law, to the extent necessary to permit unlicensed individuals, upon completion of training deemed adequate by the Commissioner of Health, to collect throat or nasopharyngeal swab specimens from individuals suspected of being infected by COVID-19, for purposes of testing; and to the extent necessary to permit non-nursing staff, upon completion of training deemed adequate by the Commissioner of Health, to perform tasks, under the supervision of a nurse, otherwise limited to the scope of practice of a licensed or registered nurse;

Subdivision 6 of section 2510 and section 2511 of the Public Health Law, to the extent necessary to waive or revise eligibility criteria, documentation requirements, or premium contributions; modify covered health care services or the scope and level of such services set forth in contracts; increase subsidy payments to approved organizations, including the maximum dollar amount set forth in contracts; or provide extensions for required reports due by approved organizations in accordance with contracts;

Section 224-b and subdivision 4 of section 225 of the Public Health Law, to the extent necessary to permit the Commissioner of Health to promulgate emergency regulations and to amend the State Sanitary Code;

Subdivision 2 of section 2803 of the Public Health Law, to the extent necessary to permit the Commissioner to promulgate emergency regulations concerning the facilities licensed pursuant to Article 28 of the Public Health Law, including but not limited to the operation of general hospitals;

Subdivision 3 of section 273 of the Public Health Law and subdivisions 25 and 25-a of section 364-j of the Social Services Law, to the extent necessary to allow patients to receive prescribed drugs without delay;

Section 400.9 and paragraph 7 of subdivision f of section 405.9 of Title 10 of the NYCRR, to the extent necessary to permit general hospitals and nursing homes licensed pursuant to Article 28 of the Public Health Law ("Article 28 facilities") that are treating patients during the disaster emergency to rapidly discharge, transfer, or receive such patients, as authorized by the Commissioner of Health, provided such facilities take all reasonable measures to protect the health and safety of such patients and residents, including safe transfer and discharge practices, and to comply with the Emergency Medical Treatment and Active Labor Act (42 U.S.C. section 1395dd) and any associated regulations;

Section 400.11 of Title 10 of the NYCRR, to the extent necessary to permit Article 28 facilities receiving patients as a result of the disaster emergency to complete patient review instruments as soon as practicable;

Section 405 of Title 10 of the NYCRR, to the extent necessary to maintain the public health with respect to treatment or containment of individuals with or suspected to have COVID-19;



Subdivision d and u of section 800.3 of Title 10 of the NYCRR, to the extent necessary to permit emergency medical service personnel to provide community paramedicine, transportation to destinations other than hospitals or health care facilities, telemedicine to facilitate treatment of patients in place, and such other services as may be approved by the Commissioner of Health;

Paragraph 3 of subdivision f of section 505.14 of Title 18 of the NYCRR, to the extent necessary to permit nursing supervision visits for personal care services provided to individuals affected by the disaster emergency be made as soon as practicable;

Sections 8602 and 8603 of the Education Law, and section 58-1.5 of Title 10 of the NYCRR, to the extent necessary to permit individuals who meet the federal requirements for high complexity testing to perform testing for the detection of SARS-CoV-2 in specimens collected from individuals suspected of suffering from a COVID-19 infection;

Subdivision 4 of section 6909 of the Public Health Law, subdivision 6 of section 6527 of the Education Law, and section 64.7 of Title 8 of the NYCRR, to the extent necessary to permit physicians and certified nurse practitioners to issue a non-patient specific regimen to nurses or any such other persons authorized by law or by this executive order to collect throat or nasopharyngeal swab specimens from individuals suspected of suffering from a COVID-19 infection, for purposes of testing, or to perform such other tasks as may be necessary to provide care for individuals diagnosed or suspected of suffering from a COVID-19 infection;

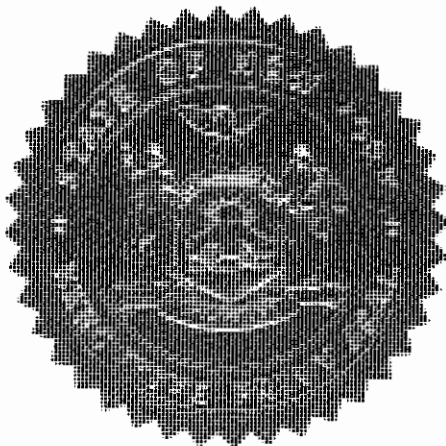
Section 596 of Title 14 of the NYCRR to the extent necessary to allow for rapid approval of the use of the telemental health services, including the requirements for in-person initial assessment prior to the delivery of telemental health services, limitations on who can deliver telemental health services, requirements for who must be present while telemental health services are delivered, and a recipient's right to refuse telemental health services;

Section 409-i of the Education Law, section 163-b of the State Finance Law with associated OGS guidance, and Executive Order No. 2 are suspended to the extent necessary to allow elementary and secondary schools to procure and use cleaning and maintenance products in schools; and sections 103 and 104-b of the General Municipal Law are suspended to the extent necessary to allow schools to do so without the usual advertising for bids and offers and compliance with existing procurement policies and procedures;

Article 7 of the Public Officers Law, section 41 of the General Construction Law, and section 3002 of the Public Health Law, to the extent necessary to permit the Public Health and Health Planning Council and the State Emergency Medical Services Council to meet and take such actions as authorized by law, as may be necessary to respond to the COVID-19 outbreak, without meeting quorum requirements or permitting the public in-person access to meetings, provided that any such meetings must be webcast and means for effective public comment must be made available; and

**FURTHER**, I hereby temporarily modify, for the period from the date of this Executive Order through April 6, 2020, the following laws:

Section 24 of the Executive Law; Sections 104 and 346 of the Highway Law; Sections 1602, 1630, 1640, 1650, and 1660 of the Vehicle and Traffic Law; Section 14(16) of the Transportation Law; Sections 6-602 and 17-1706 of the Village Law; Section 20(32) of the General City Law; Section 91 of Second Class Cities Law; Section 19-107(ii) of the New York City Administrative Code; and Section 107.1 of Title 21 of the New York Codes, Rules and Regulations, to the extent necessary to provide the Governor with the authority to regulate traffic and the movement of vehicles on roads, highways, and streets.



BY THE GOVERNOR

  
Secretary to the Governor

GIVEN under my hand and the Privy Seal of the  
State in the City of Albany this  
seventh day of March in the year two  
thousand twenty.



**Exhibit C**

City of New York Emergency Executive Order 98



THE CITY OF NEW YORK  
OFFICE OF THE MAYOR  
NEW YORK, N.Y. 10007

EMERGENCY EXECUTIVE ORDER NO. 98

DECLARATION OF LOCAL STATE OF EMERGENCY

March 12, 2020

EMERGENCY EXECUTIVE ORDER

WHEREAS, there is currently an outbreak of novel coronavirus disease 2019 ("COVID-19"), a respiratory illness, first detected in Wuhan City, Hubei Province, China, and it continues to expand with a growing number of international locations, including the United States. A "novel coronavirus" is a strain that has not been previously found in humans;

WHEREAS, on January 31, 2020, the United States Secretary of Health and Human Services announced a nationwide public health emergency to respond to COVID-19;

WHEREAS, on March 1, 2020, the City of New York confirmed its first case of COVID-19;

WHEREAS, on March 11, 2020, the World Health Organization characterized COVID-19 as a pandemic, the first ever pandemic caused by a coronavirus;

WHEREAS, COVID-19 has been detected in thousands of people worldwide and can be spread from person to person. The City has been working to identify and test others in the City that have potentially been exposed to COVID-19;

WHEREAS, this worldwide outbreak of COVID-19 is emerging and rapidly evolving;

WHEREAS, the number of confirmed cases of COVID-19 has risen steadily;

WHEREAS, the City and all of its agencies are prepared to respond to COVID-19 and are committed to protecting the health and well-being of all New Yorkers;

WHEREAS, the City urges the public to stay home if they are ill and consult with their doctor if they are experiencing more severe symptoms such as shortness of breath, are older adults, or are any age with chronic medical conditions that increase the likelihood of more severe COVID-19 disease;

WHEREAS, the public is directed to call 311 if they are unable to contact a health provider to seek care for any reason;

WHEREAS, the City recommends all New Yorkers follow the Centers for Disease Control's stringent guidance for cleaning and disinfection;

WHEREAS, the City is working closely and coordinating with its agency partners, including the Metropolitan Transportation Authority and Port Authority of New York and New Jersey, as well as State and Federal officials to ensure that it is prepared and ready to address any future cases of COVID-19;

WHEREAS, the risk of community spread throughout New York City impacts the life and health of the public and public health is imperiled by the person-to-person spread of COVID-19; and

WHEREAS, on March 7, 2020, New York State Governor Andrew Cuomo declared a State disaster emergency for the entire State of New York to address the threat that COVID-19 poses to the health and welfare of New York residents and visitors;

NOW, THEREFORE, pursuant to the powers vested in me by the laws of the State of New York and the City of New York, including but not limited to the New York Executive Law, the Charter and Administrative Code of the City of New York, and the common law authority to protect the public in the event of an emergency, it is hereby ordered:

Section 1. State of Emergency. A state of emergency is hereby declared to exist within the City of New York.

Section 2. I hereby direct all agency heads, including Emergency Management, the Department of Health and Mental Hygiene, Community Affairs, Fire, Police, Sanitation, Buildings and Transportation to take all appropriate and necessary steps to preserve public safety and the health of their employees, and to render all required and available assistance to protect the security, well-being and health of the residents of the City.

Section 3. The State of Emergency shall remain in effect for a period not to exceed thirty days or until rescinded, whichever occurs first. Additional declarations to extend the State of Emergency for additional periods not to exceed thirty days will be issued if needed. The remainder of this Order shall remain in effect for five (5) days unless terminated at an earlier date. This Order may be extended for additional periods not to exceed five (5) days each during the pendency of the local state of emergency.

Section 4. This Executive Order shall take effect immediately.

  
Bill de Blasio,  
MAYOR

## **Exhibit D**

President Trump's Emergency Declaration pursuant to Section 501 (b) of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121-5207.

**PROCLAMATIONS**

# Proclamation on Declaring a National Emergency Concerning the Novel Coronavirus Disease (COVID-19) Outbreak

Issued on: March 13, 2020



In December 2019, a novel (new) coronavirus known as SARS-CoV-2 (“the virus”) was first detected in Wuhan, Hubei Province, People’s Republic of China, causing outbreaks of the coronavirus disease COVID-19 that has now spread globally. The Secretary of Health and Human Services (HHS) declared a public health emergency on January 31, 2020, under section 319 of the Public Health Service Act (42 U.S.C. 247d), in response to COVID-19. I have taken sweeping action to control the spread of the virus in the United States, including by suspending entry of foreign nationals seeking entry who had been physically present within the prior 14 days in certain jurisdictions where COVID-19 outbreaks have occurred, including the People’s Republic of China, the Islamic Republic of Iran, and the Schengen Area of Europe. The Federal Government, along with State and local governments, has taken preventive and proactive measures to slow the spread of the virus and treat those affected, including by instituting Federal quarantines for individuals evacuated from foreign nations, issuing a declaration pursuant to section 319F-3 of the Public Health Service Act (42 U.S.C. 247d-6d), and releasing policies to accelerate the acquisition of personal protective equipment and streamline bringing new diagnostic capabilities to laboratories. On March 11, 2020, the World Health Organization announced that the COVID-19 outbreak can be characterized as a pandemic, as the rates of infection continue to rise in many locations around the world and across the United States.

The spread of COVID-19 within our Nation’s communities threatens to strain our Nation’s healthcare systems. As of March 12, 2020, 1,645 people from 47 States have been infected with the virus that



causes COVID-19. It is incumbent on hospitals and medical facilities throughout the country to assess their preparedness posture and be prepared to surge capacity and capability. Additional measures, however, are needed to successfully contain and combat the virus in the United States.

NOW, THEREFORE, I, DONALD J. TRUMP, President of the United States, by the authority vested in me by the Constitution and the laws of the United States of America, including sections 201 and 301 of the National Emergencies Act (50 U.S.C. 1601 *et seq.*) and consistent with section 1135 of the Social Security Act (SSA), as amended (42 U.S.C. 1320b-5), do hereby find and proclaim that the COVID-19 outbreak in the United States constitutes a national emergency, beginning March 1, 2020. Pursuant to this declaration, I direct as follows:

Section 1. Emergency Authority. The Secretary of HHS may exercise the authority under section 1135 of the SSA to temporarily waive or modify certain requirements of the Medicare, Medicaid, and State Children's Health Insurance programs and of the Health Insurance Portability and Accountability Act Privacy Rule throughout the duration of the public health emergency declared in response to the COVID-19 outbreak.

Sec. 2. Certification and Notice. In exercising this authority, the Secretary of HHS shall provide certification and advance written notice to the Congress as required by section 1135(d) of the SSA (42 U.S.C. 1320b-5(d)).

Sec. 3. General Provisions. (a) Nothing in this proclamation shall be construed to impair or otherwise affect:

(i) the authority granted by law to an executive department or agency, or the head thereof; or

(ii) the functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(b) This proclamation shall be implemented consistent with applicable law and subject to the availability of appropriations.

(c) This proclamation is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.



IN WITNESS WHEREOF, I have hereunto set my hand this thirteenth day of March, in the year of our Lord two thousand twenty, and of the Independence of the United States of America the two hundred and forty-fourth.

DONALD J. TRUMP



## CITY OF PORTSMOUTH

LEGAL DEPARTMENT

Robert P. Sullivan, City Attorney – 603-610-7204 (Direct Dial)  
Suzanne M. Woodland, Deputy City Attorney – 603-610-7240 (Direct Dial)  
Kathleen M. Dwyer, Assistant City Attorney – 603-498-2126 (Direct Dial)  
Jane M. Ferrini, Assistant City Attorney – 603-610-7256 (Direct Dial)

March 16, 2020

### VIA E-MAIL AND MAIL

Tonia Bandrowicz  
Senior Enforcement Counsel  
Office of Environmental Stewardship  
New England Office of the  
U.S. Environmental Protection Agency  
5 Post Office Square  
Suite 100 (Mail Code OES 04-3)  
Boston, MA 02109-3912

**RE: United States of America, State of New Hampshire, and Conservation  
Law Foundation v. City of Portsmouth  
United States District Court, District of New Hampshire  
Civil Action No. 09-cv-283-PB**

Dear Ms. Bandrowicz:

This letter follows up my communication of March 13, 2020 relative to the Sagamore Avenue Area Sewer Extension Project (Sagamore Project) as described in the Consent Decree Second Modification at Article IV, Paragraph 8(d) completion of the Sagamore Project by June 30, 2022.

Please be advised that on Saturday March 14, 2020, the Portsmouth City Manager and the Portsmouth City Mayor elected to postpone the Sagamore Project Work Session scheduled for March 16, 2020. All items on the City Council agenda that would have involved public input were postponed due to Covid-19 concerns. I attach the modified agenda and a copy of the communication that was posted to the City's website. As you know a State of Emergency was declared at the federal level on Friday March 13, 2020 and by the State of New Hampshire on March 13, 2020.

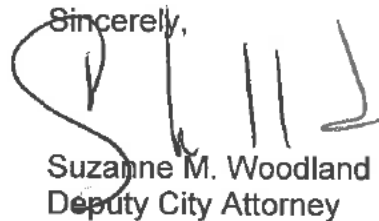
The City has prepared this communication to reserve its right to make a claim for Force Majeure under Article VII, paragraph 36 of the Consent Decree. The City is concerned that this further delay to the project could impact the scheduled completion date of June 30, 2022. As you know from the March 13, 2020 letter, that completion date was already at risk, but staff was evaluating how the work might be accomplished within the timeframe if the City Council could act quickly.

It is the City's opinion that although the Sagamore Project will improve water quality over time, the possible delay in the completion of the project will not cause or contribute to an "endangerment to public health, welfare, or the environment." Known

failed septic systems in the area are being routinely pumped and water quality would not be made worse by this delay.

I trust you will distribute this communication to the Attorney General's office and to others within EPA as may be appropriate. As the situation continues to unfold locally we will keep you apprised. Feel free to contact me if you have questions or concerns.

Sincerely,

A handwritten signature in black ink, appearing to read 'SMW', is written over the typed name and title.

Suzanne M. Woodland  
Deputy City Attorney

SMW/smr

#### Attachments

cc: Allen Brooks, Esq., Department of Justice, Environmental Protection Bureau  
Thomas F. Irwin, Esq., Conservation Law Foundation  
Solanch Pastrana-Del Valle, Enforcement, EPA  
Tracy L. Wood, P.E., NHDES Wastewater Engineering Bureau  
Terry Desmarais, Jr., P.E., City Engineer

# A SPECIAL MESSAGE FROM CITY OF PORTSMOUTH REGARDING THE CITY COUNCIL MEETING ON MONDAY, MARCH 16, 2020

March 14, 2020

"Out of an abundance of caution, recognizing the declaration of emergency by both President Trump and Governor Sununu, Mayor Becksted and City Manager Conard have made an adjustment to the City Council meeting agenda for Monday night, March 16.

The Sagamore Avenue Sewer Extension Project Work Session and Public Comment Session will be postponed to a future date. Only the most essential and time sensitive agenda items will be heard. The modified agenda will be posted on the City website as soon as it is finalized.

The emergency measures strongly encourage people not to gather in groups. So residents are asked to watch the City Council meeting at home on Channel 22 Comcast (live-streamed online) and not attend in person. Thank you," said Karen S. Conard, Portsmouth City Manager in a message to residents this morning.

The message continued:

Please be advised that the situation may change, pending additional information and updates. City Manger Karen Conard and City Health Officer Kim McNamara, with Police and Fire, are leading the City's emergency management response and will continue maintaining regular communication with staff, community stakeholders, and state officials to stay abreast of the situation. Further updates will be provided to the community as we receive them.

We continue to encourage staff and visitors to stay home if they feel sick and to

follow recommended hygiene practices. Making sure everyone is safe and healthy is our top priority.

Many of the things you do to help prevent colds and the flu can help protect you against other respiratory viruses:

- Wash your hands often with soap and warm water for at least 20 seconds.
- Avoid touching your eyes, nose and mouth.
- Clean things that are frequently touched (like doorknobs and countertops) with household cleaning spray or wipes.
- Cover your mouth when you cough or sneeze. Use a tissue or your inner elbow, not your hands.
- Stay home if you are sick and avoid close contact with others. For more information on Coronavirus (COVID-19), please visit the U.S. CDC's website, or the NH Department of Health & Human Services Joint information Center website.

Governor Chris Sununu, the New Hampshire Department of Health and Human Services and NH Homeland Security and Emergency Management have also mobilized 211NH to handle all COVID-19 related calls from New Hampshire residents. **All residents with questions or concerns surrounding the COVID-19 outbreak can call 2-1-1.**



City of **PORTSMOUTH** Home >



# CITY COUNCIL MEETING

MUNICIPAL COMPLEX, EILEEN DONDERO FOLEY COUNCIL CHAMBERS, PORTSMOUTH, NH  
DATE: MONDAY, MARCH 16, 2020 TIME: 7:00 pm

AN ANTICIPATED NON-PUBLIC SESSION WILL BE HELD AT THE END OF THE CITY COUNCIL MEETING RE: MCINTYRE – RSA 91-A:3, II (e)

- I. 6:00PM WORK SESSION – SAGAMORE AVENUE SEWER EXTENSION - **POSTPONED**
- II. PUBLIC DIALOGUE SESSION *[when applicable – every other regularly scheduled meeting]* - **N/A**
- III. CALL TO ORDER [7:00 p.m. or thereafter]
- IV. ROLL CALL
- V. INVOCATION
- VI. PLEDGE OF ALLEGIANCE
- VII. ACCEPTANCE OF MINUTES – JANUARY 28, 2020
- VIII. RECOGNITIONS AND VOLUNTEER COMMITTEE REPORTS - **POSTPONED**
  - Recognition of 5<sup>th</sup> Grade Little Harbour School student Aadhavan “Addy” Veerendra, winner of the NH Spelling Bee with Principal Lawson and Spelling Bee Club teacher Molly Green
- IX. PUBLIC COMMENT SESSION - **POSTPONED**
- X. PUBLIC DIALOGUE SUMMARY *[when applicable]* - **N/A**
- XI. PUBLIC HEARING AND VOTES ON ORDINANCES AND/OR RESOLUTIONS - **POSTPONED**
  - A. First reading of Ordinance amending Chapter 7, Article I, Section 7.105 C – Designated Motorcycle Parking Area (*Sample motion – move to pass first reading and schedule a public hearing and second reading at the April 6, 2020 City Council meeting*)
- XII. MAYOR BECKSTED
  1. Appointments to be Considered:
    - Appointment of Beth Margeson to the Conservation Commission as an Alternate
    - Reappointment of Jessica Blasko to the Conservation Commission
    - Reappointment of Allison Tanner to the Conservation Commission
    - Reappointment of Jackie Cali-Pitts to the Recreation Board
    - Reappointment of Lisa Louttit to the Recreation Board
  2. \*Appointments to be Voted:
    - Reappointment of Barbara McMillan to the Conservation Commission
    - Reappointment of William Townsend to the Peirce Island Committee
    - Reappointment of John Simon to the Peirce Island Committee
    - Appointment of Kara Rodeneizer to the Portsmouth Housing Authority
    - Reappointment of Robin Pickering to the Portsmouth Housing Authority – Resident Member

- Appointment of David Cosgrove to the Citywide Neighborhood Committee
  - Appointment of Mark Syracuse to the Citywide Neighborhood Committee
3. \*Establish Committee for Negotiations Re: Boyle

### **XIII. CITY COUNCIL MEMBERS**

#### **A. ASSISTANT MAYOR**

##### **SPLAINE**

1. \*Jones Avenue Landfill
2. \*Coronavirus Planning and Preparation – and Observations/Concerns from Economic Development Commission meeting of Friday, March 6, 2020

#### **B. COUNCILOR McEACHERN**

1. \*Creation of a Subcommittee comprised of 2 Council members and 4 residents selected by the Mayor and approved by the Council to discuss current ADU Approval process and ways to improve

#### **C. COUNCILOR WHELAN**

1. \*McIntyre Subcommittee Report

#### **D. COUNCILOR KENNEDY**

1. Impact Fees  
*I would recommend the following suggestions to support The City of Portsmouth's Infrastructure:*  
 For projects over two units the following impact fees would apply:  
 1-Bedroom or 1,000 sq. ft. or less \$25,000/unit  
 2-Bedrooms or 1,500 sq. ft. or less \$50,000/unit  
 3-Bedrooms or 2,000 sq. ft. or less \$75,000/unit  
 4-Bedrooms or 2,500 sq. ft. or less \$100,000/unit  
 5-Bedrooms or 3,000 sq. ft. or less \$125,000/unit  
 The following motion I will be making:  
***(Sample motion – move to have the City Manager, Legal Staff, Fees Committee and Planning Board Review and Report Back on the suggested Impact Fees by the April 20, 2020 City Council meeting. I would also encourage other suggestions from these groups on Impact Fees with a Report Back on April 20, 2020)***

#### **E. COUNCILOR HUDA**

1. Annual Budget Spending Request by Department  

Does that mean the Department Manager has the ability to spend those dollars on anything as long as they stay within the budget dollars appropriated to them?

***(Sample motion – move to request a report back from the City Manager on the following: (In a language & format that can be understood by all City residents)***
  - ***To Clarify the dollar limit spending authority granted to different positions (i.e. Directors, Department Managers, City Purchasing Agent, City Manager)***

- ***To discuss if there is a dollar limit restriction on the City Department Directors or Managers ability to transfer dollars among the various line items in their appropriated budgets. Do these transfers require the approval of either the Finance Director or City Manager.***
- ***Please include references to source documentation that authorizes such dollar limits.***
- ***Please include a discussion on the various controls applied to the above.***
- 2. To Clarify the City Managers, Interpretation of Section 7.23 Information Technology Management of the City Charter as it relates to the Information Technology section of the Administrative Code?
  - ***Is there any conflict?***
  - ***Based on the interpretation of the above, is the City following the City Charter or the Administrative Code?***

#### **XIV. APPROVAL OF GRANTS/DONATIONS**

1. Acceptance of Donations to the Portsmouth Police Department:
  - Mr. Gormley and Ms. Inguchi in support of Portsmouth Police Department – \$1,000.00
  - Ms. Marchi in support of Police Explorer Cadets - \$20.00***(Sample motion – move to accept and approve the donations for the Police Department as presented)***
2. Acceptance of Grant from the NH Department of Safety for Night Vision Equipment - \$37,500.00 ***(Sample motion – move to accept and approve the grant for the Police Department as presented)***

#### **XV. CITY MANAGER'S ITEMS WHICH REQUIRE ACTION**

##### **A. CITY MANAGER CONARD**

##### **City Manager's Items Which Require Action:**

1. Market Street Property Purchase from NH Department of Transportation - **POSTPONED**
2. Report Back from Planning Regarding 27 Thaxter Road - **POSTPONED**
3. Foundry Place Agreements and Easements
4. Request to Establish a Work Session Regarding Prescott Park
5. Request to Renew Seacoast Growers' Association (Farmer's Market) Proposed 2020 License Agreement
6. Request for Public Hearing Regarding Bonding of Fire Apparatus
7. Request to Establish Public Hearing Regarding Petition for Discontinuance of a Portion of Cate Street Connector Road - **POSTPONED**



## **XVI. CONSENT AGENDA**

- A. Request for License to Install Projecting Sign for owner Harrison Schoaneu of Fresh House for property located at 76 Congress Street (***Anticipated action - move to approve the aforementioned Projecting Sign License as recommended by the Planning Director, and further, authorize the City Manager to execute the License Agreement for this request***)  
**Planning Director's Stipulations**
- ***The license shall be approved by the Legal Department as to content and form;***
  - ***Any removal or relocation of projecting sign, for any reason, shall be done at no cost to the City; and***
  - ***Any disturbance of a sidewalk, street or other public infrastructure resulting from the installation, relocation or removal of the projecting sign, for any reason shall be restored at no cost to the City and shall be subject to review and acceptance by the Department of Public Works***
- B. Request for License to Install Projecting Sign for owner Nuttaya Nicholas of 5 Thai Bistro for property located at 40 Pleasant Street (***Anticipated action - move to approve the aforementioned Projecting Sign License as recommended by the Planning Director, and further, authorize the City Manager to execute the License Agreement for this request***)  
**Planning Director's Stipulations**
- ***The license shall be approved by the Legal Department as to content and form;***
  - ***Any removal or relocation of projecting sign, for any reason, shall be done at no cost to the City; and***
  - ***Any disturbance of a sidewalk, street or other public infrastructure resulting from the installation, relocation or removal of the projecting sign, for any reason shall be restored at no cost to the City and shall be subject to review and acceptance by the Department of Public Works***
- C. Letter from Monte Bohanan, Portsmouth Halloween Parade, requesting permission to hold the 26<sup>th</sup> Annual Portsmouth Halloween Parade on Saturday, October 31, 2020 at 7:00 p.m. (***Anticipated action – move to refer to the City Manager with authority to act***)

## **XVII. PRESENTATIONS & CONSIDERATION OF WRITTEN COMMUNICATIONS & PETITIONS**

- A. Email Correspondence (***Sample motion – move to accept and place on file***)
- B. \*Report from the City's Health Department regarding Covid-19
- C. Letter from Marc Stettner Re: Designated Motorcycle Moped Parking Area

- D. Letter from Craig M. Steigerwalt Re: Petition for Release of Interest in Paper Street contiguous to 276 Dennett Street (Tax Map 143, Lot 13) pursuant to RSA 231:51 and 231:52 (***Sample motion – move to refer to the Planning Board for report back***)
- E. Letter from Attorney Daniel C. Hoefle Re: Request for Release of Paper Street Pursuant to NH RSA 231:51 and 231:52 – 294 Dennett Street (Tax Map 143, Lot 26) (***Sample motion – move to refer to the Planning Board for report back***)
- F. Letter from Seth Levine regarding the Middle Street Bike Lanes (***Sample motion – move to accept and place on file***)
- G. Letter from Jim Fernald regarding proposed dock on 21 Fernald Court
- H. Background Information from Deb & Ken Jennings on 27 Thaxter Road

#### **XVIII. CITY MANAGER'S INFORMATIONAL ITEMS**

- 1. Market Street Pedestrian Bridge
- 2. \*Questions from Councilor Huda from the 3/2/20 City Council meeting
- 3. Memorandum on Consultants, Contracts and Purchases over \$10,000.00

#### **XIX. MISCELLANEOUS BUSINESS INCLUDING BUSINESS REMAINING UNFINISHED AT PREVIOUS MEETING**

#### **XX. ADJOURNMENT [at 10:00 p.m. or earlier]**

**KELLI L. BARNABY, MMC/CNHMC  
CITY CLERK**

*\* Indicates verbal report*

## Mceathron, Kimberly

---

**From:** Modigliani, Justine  
**Sent:** Thursday, April 23, 2020 9:55 AM  
**To:** dhensel@salmun.com  
**Cc:** jshurilla@salmun.com; Lisa Maybee; Coats, Andrea; bshearer@nussclarke.com; Mceathron, Kimberly  
**Subject:** RE: Request of Extension to go beyond May 2020 completion deadline due to COVID-19

Good Morning Mr. Hensel,

I hope this email finds you in good health. We have reviewed your request for an extension and given the current circumstances, we are supportive of extending the deadline to complete the UV disinfection project as requested, until September 14, 2020, with the implementation of the short-term measures in the Chlorine Action Plan designed to prevent effluent limit exceedances throughout the 2020 disinfection season.

Please keep us informed should any other questions or concerns arise.

Be well,

Justine Modigliani, Chief  
CWA Compliance Section

---

**From:** Hensel, Dennis <[dhensel@salmun.com](mailto:dhensel@salmun.com)>  
**Sent:** Wednesday, April 22, 2020 9:00 AM  
**To:** Mceathron, Kimberly <[McEathron.Kimberly@epa.gov](mailto:McEathron.Kimberly@epa.gov)>  
**Cc:** Shurilla, Jeff <[jshurilla@salmun.com](mailto:jshurilla@salmun.com)>; Lisa Maybee <[lisa.maybee@sni.org](mailto:lisa.maybee@sni.org)>; Coats, Andrea <[Coats.Andrea@epa.gov](mailto:Coats.Andrea@epa.gov)>; 'Bruce Shearer' <[bshearer@nussclarke.com](mailto:bshearer@nussclarke.com)>  
**Subject:** RE: Request of Extension to go beyond May 2020 completion deadline due to COVID-19

Hello Kim,

I have received word from our Engineer and there is a consensus that September 14, 2020 will be our target for completion if things go as planned. That turns out to be just over 21 weeks from now. Bruce wants to make sure we have a few weeks for testing and performance. I am told the submittals review milestone should be completed by the end of this week. Everyone is moving forward and as long as we adhere to safety protocols for crews and employees, and suppliers can fulfil orders, we should be able to maintain schedule and keep our people healthy.

Take Care,

Dennis

**City of Salamanca**  
**Board of Public Utilities**

**From:** [Christopher Andriano](#)  
**To:** [Remnek, Alexandre](#)  
**Subject:** RE: IU with no discharge due to relocation  
**Date:** Tuesday, May 05, 2020 12:45:09 PM

---

Alexi,

Thank you for your response. I'm supposed to be hearing from them any day now as to where they stand on getting their production line back up and running. If everything is good to go, then I will just get my inspection and sampling done and note it in the annual report as to why we were delayed. They did properly request an extension on their own sampling back in March due to their relocation and I have that documented in their file.

If they are not anywhere near ready to start any production then I will have them immediately request a temporary zero discharge permit for the length of time until they are up and running again. And if needed, I will make sure to document that in the annual report.

Thank you again for your help. Stay safe and stay healthy.

Regards,

Christopher Andriano

Acting Laboratory Manager / IPP Coordinator  
City of Schenectady WPCP  
300 Anthony Street Schenectady, NY 12308  
Tel: 518.631.0073  
Email: [candriano@schenectadyny.gov](mailto:candriano@schenectadyny.gov)

-----Original Message-----

From: Remnek, Alexandre [<mailto:Remnek.Alexandre@epa.gov>]  
Sent: Tuesday, May 5, 2020 11:30 AM  
To: Christopher Andriano  
Subject: RE: IU with no discharge due to relocation

Chris,

Sorry for the delayed response to your inquiry. We sent out an email on March 18 providing guidance on implementing the pretreatment program given national CoVID-19 emergency. In particular:

\*Control Authorities (CAs) should document with justification in their subsequent annual or semi-annual pretreatment program reports on any changes they made to their inspection/monitoring/reporting program from March 9, 2020 onward.

\*Similarly, CAs can allow industrial users (IUs) reasonable delay in submitting semi-annual and self-monitoring reports to the CAs if they face reduced operation or closure, or issues related to worker health and safety. The IUs should submit written requests for approval to do so from the CAs.

In your permit you have the following language:

Permit Modifications

This permit may be modified for good causes including, but not limited to, the following:

c.A change in any condition in either the industrial user or the POTW that requires either a temporary or permanent reduction or elimination of the authorized discharge

The filing of a request by the permittee for a permit modification, revocation and reissuance, or termination, or a notification of planned changes or anticipated noncompliance, does not stay any permit condition.

Therefore, I suggest that the permittee should have or, if not the case, immediately files a request for a permit modification and that Schenectady provide a temporary zero-discharge permit. If you need examples of a zero-discharge permit we would be glad to provide an example. Please document any changes in the pretreatment program in the annual pretreatment report submitted to Christy Arvizu and Doug McKenna with EPA Region 2-Environmental Compliance.

Please let me know if you have any additional questions.

Alexi

Alexandre Remnek  
Environmental Engineer  
Pretreatment Expert  
Unconventional Oil and Gas Regional Contact

NPDES Section  
Clean Water Regulatory Branch, Water Division  
Environmental Protection Agency, Region 2

290 Broadway  
New York, NY 10007

Work: 212-637-3774  
Fax: 212-637-3889  
E-mail: remnek.alexandre@epa.gov

-----Original Message-----

From: Christopher Andriano <CAndriano@schenectadyny.gov>  
Sent: Friday, April 24, 2020 9:21 AM  
To: Remnek, Alexandre <Remnek.Alexandre@epa.gov>  
Subject: RE: IU with no discharge due to relocation

Alexi,

I've attached the most recent permit we have for SuperPower Inc. It was just revised for their relocation. Let me know if you have any questions. Thank you.

Hope you and your family are doing well also. Stay healthy and stay safe.

Christopher Andriano

Acting Laboratory Manager / IPP Coordinator City of Schenectady WPCP  
300 Anthony Street Schenectady, NY 12308  
Tel: 518.631.0073  
Email: candriano@schenectadyny.gov

-----Original Message-----

From: Remnek, Alexandre [<mailto:Remnek.Alexandre@epa.gov>]  
Sent: Thursday, April 23, 2020 3:52 PM  
To: Christopher Andriano  
Subject: RE: IU with no discharge due to relocation

Hi,

I don't have the permit or draft permit in my folders. Please send it to me.

On another note, I hope you and your friends and family are doing well. This has been a tough time for us in NYC.

Alexi

Alexandre Remnek  
Environmental Engineer  
Pretreatment Expert  
Unconventional Oil and Gas Regional Contact

NPDES Section  
Clean Water Regulatory Branch, Water Division Environmental Protection Agency, Region 2

290 Broadway  
New York, NY 10007

Work: 212-637-3774  
Fax: 212-637-3889  
E-mail: remnek.alexandre@epa.gov

-----Original Message-----

From: Christopher Andriano <CAndriano@schenectadyny.gov>  
Sent: Thursday, April 23, 2020 3:11 PM  
To: Remnek, Alexandre <Remnek.Alexandre@epa.gov>  
Subject: RE: IU with no discharge due to relocation

Alexi,

I can send you a copy of their permit tomorrow if you need me too. It is for SuperPower Inc. It is the same IU that we had some discussions about pertaining to proper sampling because they have such low volume process waste that is stored in drums prior to discharge once every 6 months.

Christopher Andriano

Acting Laboratory Manager / IPP Coordinator City of Schenectady WPCP  
300 Anthony Street  
Schenectady, NY 12308 Tel: 518.631.0073  
email: candriano@schenectadyny.gov

---

From: Remnek, Alexandre [Remnek.Alexandre@epa.gov]  
Sent: Thursday, April 23, 2020 1:55 PM  
To: Christopher Andriano  
Cc: Arvizu, Christy  
Subject: RE: IU with no discharge due to relocation

Chris,

Can you please send a permit, or I probably have a permit...please let me know what industry it is. I want to look at the permit prior to giving a reply.

Thanks,

Alexi

Alexandre Remnek  
Environmental Engineer  
Pretreatment Expert  
Unconventional Oil and Gas Regional Contact

NPDES Section  
Clean Water Regulatory Branch, Water Division Environmental Protection Agency, Region 2

290 Broadway  
New York, NY 10007

Work: 212-637-3774  
Fax: 212-637-3889  
E-mail: remnek.alexandre@epa.gov<<mailto:remnek.alexandre@epa.gov>>

From: Christopher Andriano <CAndriano@schenectadyny.gov>  
Sent: Thursday, April 23, 2020 1:41 PM  
To: Remnek, Alexandre <Remnek.Alexandre@epa.gov>  
Cc: Arvizu, Christy <Arvizu.Christy@epa.gov>  
Subject: IU with no discharge due to relocation

Alexi,

One of my IUs is in the midst of relocating. They started in the beginning of March and properly requested a delay to do their semi-annual monitoring since they wouldn't have any discharge in March as they typically would. They were hoping to be up and running by mid-April but were held up with the situation surrounding the COVID-19. They are now predicting that they wouldn't be up and running until early May, most likely later. They haven't had any discharge since September. I also haven't been able to do my annual inspection because they are still reconstructing their production line. Would it be acceptable to just have them give me a zero discharge report for the past 6 months, that way I can close out my IPP year, and then inspect and sample at the earliest possible date and include that information with the 2020-2021 IPP year? They have no issue letting me in to inspect and sample, there just isn't anything to really inspect and nothing to sample. I didn't know if that was an acceptable route to go as long as I documented in my annual report why they weren't inspected and sampled.

Let me know if you have any questions. Thanks again for your help.

Christopher Andriano

Acting Laboratory Manager / IPP Coordinator City of Schenectady WPCP  
300 Anthony Street Schenectady, NY 12308  
Tel: 518.631.0073  
Email: candriano@schenectadyny.gov<<mailto:candriano@schenectadyny.gov>>

---

This email may not be deemed to create any agreement binding upon the City of Schenectady without action of the City Council, the Mayor, and/or the Corporation Counsel, as required by law.

CONFIDENTIALITY NOTICE: The information contained in this e-mail message is intended only for the personal and confidential use of the recipient(s) named above. This message may contain information that is privileged and confidential. If the reader of this message is not the intended recipient or an agent responsible for delivering it to the intended recipient, you are hereby notified that you have received this document in error and that any review, dissemination, distribution, use or copying of this message is strictly prohibited. If you have received this communication in error, please notify sender immediately by e-mail, and delete the original message.

---

This email may not be deemed to create any agreement binding upon the City of Schenectady without action of the City Council, the Mayor, and/or the Corporation Counsel, as required by law.

CONFIDENTIALITY NOTICE: The information contained in this e-mail message is intended only for the personal and confidential use of the recipient(s) named above. This message may contain information that is privileged and confidential. If the reader of this message is not the intended recipient or an agent responsible for delivering it to the intended recipient, you are hereby notified that you have received this document in error and that any review, dissemination, distribution, use or copying of this message is strictly prohibited. If you have received this communication in error, please notify sender immediately by e-mail, and delete the original message.

---

This email may not be deemed to create any agreement binding upon the City of Schenectady without action of the City Council, the Mayor, and/or the Corporation Counsel, as required by law.

CONFIDENTIALITY NOTICE: The information contained in this e-mail message is intended only for the personal and confidential use of the recipient(s) named above. This message may contain information that is privileged and confidential. If the reader of this message is not the intended recipient or an agent responsible for delivering it to the intended recipient, you are hereby notified that you have received this document in error and that any review, dissemination, distribution, use or copying of this message is strictly prohibited. If you have received this communication in error, please notify sender immediately by e-mail, and delete the original message.

---

This email may not be deemed to create any agreement binding upon the City of Schenectady without action of the City Council, the Mayor, and/or the Corporation Counsel, as required by law.

CONFIDENTIALITY NOTICE: The information contained in this e-mail message is intended only for the personal and confidential use of the recipient(s) named above. This message may contain information that is privileged and confidential. If the reader of this message is not the intended recipient or an agent responsible for delivering it to the intended recipient, you are hereby notified that you have received this document in error and that any review, dissemination, distribution, use or copying of this message is strictly prohibited. If you have received this communication in error, please notify sender immediately by e-mail, and delete the original message.



## Melcher, John

---

**Subject:** FW: NPDES Sampling contingency planning

**From:** Pastrana-Del Valle, Solanch  
**Sent:** Friday, March 20, 2020 1:54 PM  
**To:** Pierce, John <[JohnPierce@cogentrix.com](mailto:JohnPierce@cogentrix.com)>; [teresa.ptak@des.nh.gov](mailto:teresa.ptak@des.nh.gov)  
**Cc:** Larson, Stephanie <[Stephanie.Larson@des.nh.gov](mailto:Stephanie.Larson@des.nh.gov)>  
**Subject:** RE: NPDES Sampling contingency planning

Good afternoon John,

An upset only applies to exceedances of the technology based effluent limit violations, it does not include sampling. So if a treatment facility is unable to conduct their required sampling they would still not qualify for an upset, since it's not exceeding the limit.

The region is currently instructing facilities that are unable to conduct and/or analyze their samples due to COVID-19 related issues to submit their DMRs by the appropriate date and enter the No Data Indicator Code "Special Report Attached" (NODI = 3). Please attach a document explaining the reason for using the code.

Please contact me or Teresa Ptak from NH DES, if you have any additional questions.

Best,

***Solanch S. Pastrana-Del Valle***  
Enforcement and Compliance Assurance Division  
U.S. EPA New England – Region 1 (Mail Code: 04-4)  
5 Post Office Square, Boston, MA 02109-3912  
(617) 918-1746

---

**From:** Pierce, John <[JohnPierce@cogentrix.com](mailto:JohnPierce@cogentrix.com)>  
**Sent:** Friday, March 20, 2020 8:23 AM  
**To:** [teresa.ptak@des.nh.gov](mailto:teresa.ptak@des.nh.gov)  
**Cc:** Pastrana-Del Valle, Solanch <[pastrana-del-valle.solanch@epa.gov](mailto:pastrana-del-valle.solanch@epa.gov)>; Larson, Stephanie <[Stephanie.Larson@des.nh.gov](mailto:Stephanie.Larson@des.nh.gov)>  
**Subject:** RE: NPDES Sampling contingency planning

Thank you for the clarification Teresa, I understand an 'upset' is limited to noncompliance with permit effluent limitations; I would imagine typically for wastewater treatment facilities- does the upset provision ever extend to other types of permitted discharge facilities- or by definition pertain only to those that technologically treat water for discharge?

---

**From:** Ptak, Teresa <[Teresa.Ptak@des.nh.gov](mailto:Teresa.Ptak@des.nh.gov)>  
**Sent:** Thursday, March 19, 2020 3:25 PM  
**To:** Pierce, John <[JohnPierce@cogentrix.com](mailto:JohnPierce@cogentrix.com)>  
**Cc:** 'Pastrana-Del Valle, Solanch' <[pastrana-del-valle.solanch@epa.gov](mailto:pastrana-del-valle.solanch@epa.gov)>; Larson, Stephanie <[Stephanie.Larson@des.nh.gov](mailto:Stephanie.Larson@des.nh.gov)>  
**Subject:** [EXTERNAL] FW: NPDES Sampling contingency planning

This message has originated from a **non-Cogentrix email address**. Please use caution when viewing, opening links and attachments, or responding to this email.

John,

Your inquiry was forwarded to the attention of Solanch Pastrana-Del Valle of EPA and myself.

With respect to the question posed by EP Operating Systems, Part II. B. 5. of the NPDES permit only applies to actual facility "Upsets" and would not apply to the failure to obtain sampling results due to the inability to find a laboratory to process samples. Should the facility find itself in the situation it describes, contact should be made with NHDES and EPA and we will address the situation on a case-by-case basis.

Please find the EPA contact information below and cc'd on this correspondence as well.

***Solanch S. Pastrana-Del Valle***

Enforcement and Compliance Assurance Division  
U.S. EPA New England – Region 1 (Mail Code: 04-4)  
5 Post Office Square, Boston, MA 02109-3912  
(617) 918-1746

---

Teresa Ptak  
NPDES Permits & Compliance  
Wastewater Engineering Bureau, Water Division, NHDES  
29 Hazen Drive, PO Box 95, Concord, NH 03302  
Office 603-271-1497  
Fax 603-271-4128  
[teresa.ptak@des.nh.gov](mailto:teresa.ptak@des.nh.gov)

---

**From:** Pierce, John <[JohnPierce@cogentrix.com](mailto:JohnPierce@cogentrix.com)>  
**Sent:** Tuesday, March 17, 2020 12:25 PM  
**To:** Larson, Stephanie <[Stephanie.Larson@des.nh.gov](mailto:Stephanie.Larson@des.nh.gov)>  
**Subject:** NPDES Sampling contingency planning

**EXTERNAL: Do not open attachments or click on links unless you recognize and trust the sender.**

Stephanie, we're performing some contingency planning regarding permit required environmental and analytical sampling and the current situation with Corona Virus. There is an instance at a Rhode Island facility within our company where the analytical lab for NPDES required sampling has shut down.

Fortunately (as of right now), we are able to conduct our NPDES sampling this week and our vendor lab, Enthalpy in Hampton remains operational to perform analyses.

For potential planning purposes, I suspect it would be considered an upset condition per Part II. B. 5. of our NPDES permit, were the lab to shut down from the virus and there were no alternative labs to make arrangements? Would this situation qualify as 'exceptional incident... beyond the reasonable control of the permittee'?

Thanks for any insights or clarification you and/or the DES might have. –John.

John Pierce  
Manager - Environment, Health & Safety  
Essential Power Operating Services, LLC  
200 Shattuck Way  
Newington, NH 03801  
Direct: 603.766.1880 ext. 109  
Cell: 603.380.5464

## Disclaimer

The information contained in this communication from the sender is confidential. It is intended solely for use by the recipient and others authorized to receive it. If you are not the recipient, you are hereby notified that any disclosure, copying, distribution or taking action in relation of the contents of this information is strictly prohibited and may be unlawful.

This email has been scanned for viruses and malware, and may have been automatically archived by **Mimecast Ltd**, an innovator in Software as a Service (SaaS) for business. Providing a **safer** and **more useful** place for your human generated data. Specializing in; Security, archiving and compliance. To find out more [Click Here](#).

## Disclaimer

The information contained in this communication from the sender is confidential. It is intended solely for use by the recipient and others authorized to receive it. If you are not the recipient, you are hereby notified that any disclosure, copying, distribution or taking action in relation of the contents of this information is strictly prohibited and may be unlawful.

This email has been scanned for viruses and malware, and may have been automatically archived by **Mimecast Ltd**, an innovator in Software as a Service (SaaS) for business. Providing a **safer** and **more useful** place for your human generated data. Specializing in; Security, archiving and compliance. To find out more [Click Here](#).

**Bhatt, Krishna**

---

**From:** Ihlenburg, Erick  
**Sent:** Friday, May 8, 2020 11:43 AM  
**To:** Barbagallo, Lydia  
**Cc:** Simon, Paul; Villatora, Liliana  
**Subject:** FW: CORCO - URGENT COMMUNICATION - IMMEDIATE ATTENTION AND RESPONSE REQUESTED

**Importance:** High

Hi Lydia,

In response to Paul's email earlier this week, I'm forwarding a Covid-19 notification we received from CORCO, regarding a delayed performance test required under an April 25, 2019 ACO. I'll forward you our proposed response in a separate email. Our draft response is still under review by OECA and has not yet been issued. In the interim, I've had numerous discussions with CORCO's attorney about EPA's enforcement discretion memo and have discussed our proposed response with Greg Fried at OECA. Please let me know if you need any more info. Thanks,

Erick

Erick R. Ihlenburg  
Assistant Regional Counsel  
U.S. Environmental Protection Agency, Region 2  
290 Broadway, 16<sup>th</sup> Floor  
New York, New York 10007  
[Phone: \(212\) 637-3250](tel:(212)637-3250)  
[Fax: \(212\) 637-3199](tel:(212)637-3199)



**Note:** This message is confidential and may contain legally privileged material. If you are not the intended recipient, you are notified that any viewing, disclosure, copying or other unauthorized use of this message, including attachments, is strictly prohibited. If you received this message in error, please notify the sender immediately and delete this message and any attachments. Thank you.

---

**From:** Mendez, Gretchen <gmendez@gaclaw.com>  
**Sent:** Friday, March 27, 2020 2:45 PM  
**To:** Ihlenburg, Erick <Ihlenburg.Erick@epa.gov>  
**Cc:** Buettner, Robert <Buettner.Robert@epa.gov>; Rodolfo Seda <rodolfo.seda@corcopr.com>  
**Subject:** CORCO - URGENT COMMUNICATION - IMMEDIATE ATTENTION AND RESPONSE REQUESTED  
**Importance:** High

**URGENT COMMUNICATION**

**IMMEDIATE ATTENTION AND RESPONSE REQUESTED**

Dear Erick:

We hope this email finds you and your colleagues, friends and family well.

By letter postmarked on February 18, 2020 ("Notice"), Commonwealth Oil Refining Company, Inc. ("CORCO") notified the Environmental Protection Agency ("EPA" or "Agency") of its intention to conduct the performance testing ("Testing") for the Vapor Control Unit ("VCU") and the VCU's Continuous Parameter Monitoring System ("CPMS") in accordance with Sections E. II. and E.III. of the Administrative Compliance Order Reference Number CAA-02-2019-1004 dated April 25, 2019 ("ACO"). The Testing was scheduled to be performed simultaneously starting on April 22, 2020 and ending on April 23, 2020. CORCO submitted with the Notice the VCU and the CPMS Testing protocols for EPA approval in accordance with the requirements of 40 CFR § 63.8(e)(3) and ACO Sections E. IV. and E.V. EPA's approval for these Testing protocols remain pending.

Since the issuance of the ACO, CORCO has engaged in all necessary actions leading to the performance of the Testing as scheduled. On March 15, 2020, the Governor of Puerto Rico issued Executive Order 2020-23 ("Order") in response to the COVID-19 virus pandemic, which, among other things, establishes mandatory curfew and closing of all commercial establishments commencing on March 15, 2020, at 6:00 pm until March 30, 2020, excluding food sale establishments that provide drive-thru, carry-out or delivery services; wholesalers; pharmacies; supermarkets; gas stations; banks or financial institutions; elderly care centers; any business in the distribution chain of food, medicine, medical equipment or fuel; and services associated with the excluded sectors.

Since the issuance of the Order, CORCO has taken all reasonable take steps to protect its employees from contracting or otherwise being exposed to the COVID-19 virus. CORCO has also taken numerous steps aimed at preventing the proliferation of COVID-19, including restricting services provided by outside contractors to those that are essential to the facility's fuel distribution operations or required in the unlikely event of an emergency. Non-essential services have been postponed until the Order restrictions are lifted. Contractors entering CORCO are also required to meet the safeguards and procedures that have been implemented to assure contractor health and safety while providing the services needed to safely and effectively sustain facility fuel distribution operations to meet the demands of our clients and the market.

CORCO considers the services for the Testing to be essential to its operations given its commitment to perform the Testing as scheduled and strictly adhere with all ACO ordered provisions. CORCO has thus continued to work together with the contractor with the goal of performing the Testing on April 22-23, 2020.

However, on the afternoon of March 24, 2020, the contractor informed CORCO that the Testing was canceled in view of recent COVID-19 restrictions that have been imposed on the contractor, which ban employees from traveling, engaging in non-manufacturing activities and other work-related actions that may unnecessarily expose contractor personnel to the COVID-19 virus.

CORCO is sensitive to the importance of adhering to the Order restrictions and is committed to ensure worker health and safety and prevent the spread of the COVID-19 virus. CORCO is also sensitive to the precautions taken by its contractors to safeguard the welfare of its employees under these unforeseeable and unfortunate circumstance.

Accordingly, the morning of March 25, 2020, I called you to inform the Agency of the cancellation of the Test and to discuss possible ways in which the time to perform the obligations under the ACO may be extended. We agreed that CORCO should submit its request for additional time in writing.

On March 26, 2020, the Governor of Puerto Rico announced that she will issue a second executive order with stricter restrictions applicable from April 1, 2020, until April 12, 2020, which makes it impossible for CORCO to reasonably anticipate whether the Order and other COVID-19 restrictions will continue and for how long, in attempts to reschedule the next available date in which the Testing may be performed. CORCO is also facing other challenges as the COVID-19 ramifications affect the logistics that must necessarily be in place for the Testing to be performed. For instance, at this time, hotels, car rentals, restaurants and other business supporting business travel in Puerto Rico are restricting operations in view of the COVID-19 pandemic. We are unable to determine or reasonably anticipate when these sectors will restore operations to support business travel (presumably after disinfection occurs). Other factors that may affect the scheduling of the Testing moving forward include: contractor availability after the COVID-19 restrictions are lifted for the performance of the Testing, possible illness of key personnel, and implementing procedures for disinfection of the VCU and CPMS equipment and systems, for which supplies will likely to continue to be limited as they remain in high demand.

CORCO has duly complied with the Sections E.IV. and E.V. of the ACO by timely submitting the Notice and the Testing protocols by letter postmarked on February 18, 2020. CORCO has also engaged in all possible efforts to comply with the Testing obligations required under Sections E.II. and E.III of the ACO. Notwithstanding CORCO's best efforts, we have reasonably come to the conclusion that Testing cannot be performed at the facility's VCU and CPMS by the dates that were notified in the Notice (April 22-23, 2020) or even by the deadline prescribed by the ACO. CORCO also reasonably foresees that the ordered provisions of Sections E.VI, E.VII., E.VIII. and E.X. of the ACO will be impossible to comply with on the time period prescribed by the ACO, as these obligations are contingent on the performance of the VCU and the CPMS Testing.

In view of these events, CORCO reviewed 40 C.F.R. Part 63 Subpart A ("Subpart A") provisions relevant to performance testing and has found the following force majeure provisions:

***“§ 63.7 Performance Testing. (a)(4)(i) The owner or operator shall notify the Administrator, in writing as soon as practicable following the date owner or operator first knew, or through due diligence should have known that the event may cause or caused a delay in testing beyond the regulatory deadline specified in paragraph (a)(2) or (a)(3) of this section, or elsewhere in this part, but the notification must occur before the performance test deadline unless the initial force majeure or a subsequent force majeure event delays the notice, and in such cases, the notification shall occur as soon as practicable.***

***(ii) The owner or operator shall provide to the Administrator a written description of the force majeure event and a rationale for attributing the delay in testing beyond the regulatory deadline to the force majeure ; describe the measures taken or to be taken to minimize the delay; and identify a date by which the owner or operator proposes to conduct the performance test. The performance test shall be conducted as soon as practicable after the force majeure occurs.***

***(iii) The decision as to whether or not to grant an extension to performance test deadline is solely within the discretion of the Administrator. the Administrator will notify the owner or operator in writing of approval or disapproval of the request for an extension as soon as practicable.***

***(iv) Until an extension of the performance test deadline has been approved by the Administrator under paragraphs (a)(4)(i), (a)(4)(ii), and (a)(4)(iii) of this section, the owner or operator of the affected facility remains strictly subject to the requirements of this part.***

Subpart A also defines force majeure as follows:

***§ 63.2 Definitions. “Force majeure means, for purposes of § 63.7, an event that will be or has been caused by circumstances beyond the control of the affected facility, its contractors, or any entity controlled by the affected facility that prevents the owner or operator from complying with the regulatory requirement to conduct performance tests within the specified timeframe despite the affected facility’s best efforts to fulfill the obligation. Examples of such events are acts of nature, acts of war or terrorism, or equipment failure or safety hazard beyond the control of the affected facility.”***

CORCO respectfully asserts that its inability to comply with Sections E.II., E.III. E.VI., E.VII., E.VIII. and E.X. of the ACO is due to a force majeure event under section 63.7(a)(4), as the event delaying or preventing compliance with the ordered provisions of Sections E.II., E.III. E.VI., E.VII., E.VIII. and E.X. of the ACO s arise from causes beyond CORCO’s control or of the contractor’s control and notwithstanding CORCO’s best efforts to fulfill these obligations. CORCO further asserts that the conditions of Section 63.7(a)(2)(4)(i)-(ii) have been met considering that CORCO’s counsel conferred with EPA counsel regarding the contractor cancellation on shortly after the contractor canceled to discuss the possibility of extending the time to perform the ACO ordered provisions after the COVID-19 restrictions and the services supporting the Testing become available. CORCO is also promptly submitting herewith written confirmation of the force majeure reasons for delaying the performance of the Testing and other ACO obligations before the date of the Testing. CORCO has further demonstrated that it has taken all possible measures to avoid the delay of the performance of the ACO obligations associated with Testing as well as its commitment to perform these Testing and to cooperate with EPA to fully comply with all ACO ordered provisions.

Therefore, on behalf of CORCO, we hereby request that EPA grant an extension of time to meet the ordered provisions of Sections E.II., E.III. E.VI., E.VII., E.VIII. and E.X. of the of the ACO. We also request that EPA consider extending the time to comply with the obligation relative to the periodic reporting of Section E.IX. of the ACO in view that all activities associated to the performance of the Testing must necessarily come to a halt until the Order and other COVID-19 restrictions are lifted. According to our calculations, the first of these periodic reports shall be submitted by no later than April 5, 2020.

At this time, CORCO cannot possibly propose a new date for the Testing as it cannot reasonably anticipate when the COVID-19 restrictions will be lifted and how much time will be required for the services discussed above to be available (contractor, hotels, disinfection, etc.). We thus understand that this is a continuing force majeure event, an unprecedented crisis, which is difficult to put an ending date to. Also, the execution of the Testing is contingent on restrictions being lifted not only in Puerto Rico but also for contractors coming from the United States, the sectors supporting business travel and availability of contractors for Testing and disinfection.

Therefore, given this novel and unique situation, we respectfully request that EPA approve an extension of time of thirty (30) days commencing after the lifting of the federal, Commonwealth and COVID-19 restrictions affecting CORCO and/or the contractors for CORCO to comply with the ACO ordered provisions of Sections E.II., E.III. E.VI., E.VII., E.VIII., E.IX. and E.X. A 30-day period is being requested in addition to the time the COVID-restrictions will be lifted in good faith and with the understanding that it may provide CORCO adequate time to make the necessary coordination, preparation, and disinfection for the Testing to be performed.

CORCO also requests that EPA evaluate this request on an urgent basis considering that CORCO remains subject to the ACO ordered provisions until the Agency approves an extension of time or otherwise modifies the ACO and given that, according to our calculations, compliance with these obligations start as early as April 5, 2020.

CORCO wishes to maintain open communication with the Agency to discuss this request and establish the course of action moving forward for the Testing. To those ends, we are available for a call with EPA after the request is evaluated to discuss the particulars and any questions the Agency may have regarding the same.

Best regards and stay safe,

Gretchen

Attention: This e-mail contains "Attorney-Client and "Work Product" CONFIDENTIAL INFORMATION intended only for the use of the persons designated above as recipients. If you are not the intended recipient of this E-mail, or an



employee or agent responsible for delivering this message to its intended recipient, you are hereby notified that any unauthorized reading, forwarding, printing, dissemination or copying of this E-mail is prohibited. If you have received this E-mail in error, please immediately notify us by selecting the "reply" tab, and please delete the message from your inbox. Thank you.

Appendix H to the Consent Decree between the  
United States and the Puerto Rico Department of Natural and Environmental Resources in  
U.S. v. Municipality of San Juan, et al., 3:14-CV-1476 (D.P.R.) (CCC)

**Tier II Requirements for Stipulated Penalties**

## Appendix H

DNER Consent Decree Tier II Requirements		
Tier II Requirements	V.9.a	Submit a NOI or individual NPDES Application
Tier II Requirements	V.9.b. and 9.d	Submit and implement a SWMP consistent with Appendix A and any amended SWMP.
Tier II Requirements	V.9.c	Implementation and compliance with all applicable permit requirements if DNER is determined to own stormwater collection systems.
Tier II Requirements	V.10.b.iv	Complete permanent installation of booms
Tier II Requirements	V.10.c.i	Build and Install Aerosol measures
Tier II Requirements	V.10.c.ii	Installation of Discharge Channel Perimeter Fencing, Signs, or Other Measures
Tier II Requirements	V.10.d.i	Installation of continuous monitoring equipment
Tier II Requirements	V.10.c.iii	Install baffle wall according to design plan
Tier II Requirements	V.11.b	Conduct triannual cleanups
Tier II Requirements	V.11.c	Conduct annual cleanups
Tier II Requirements	V.11.d	Implementation of SOP for cleaning and maintaining manual and mechanical bar screens
Tier II Requirements	V.11.e	Proper sludge disposal
Tier II Requirements	V.11.f	Monitoring of sediment/sludge depth in Pump Station wet wells
Tier II Requirements	V.11.h.ii, h.v, and h.vi	Implementation of O&PM Plan
Tier II Requirements	V.12.b	Construct, complete, and place into operation the necessary equipment and infrastructure at the DNER Pump Stations as established in SPCC

Tier II Requirements	V.13.a	Monitoring at each of the DNER Pump Stations
Tier II Requirements	V.13.b.i	Implement recommendations of automatic bar screen Feasibility Study
Tier II Requirements	V.13.b.iv	Install the floatables controls identified in DNER's final floatables report
Tier II Requirements	V.13.c, d, and e	Timely make payments to the Court Registry Account

**From:** [Froikin, Sara](#)  
**To:** [Barbagallo, Lydia](#)  
**Cc:** [Villatora, Lilitana](#)  
**Subject:** COVID request - DSNY case  
**Date:** Tuesday, May 19, 2020 11:29:25 AM

---

Below, we followed up after the CD termination to see if NYC needed anything further, and did not hear back from them.

Thanks,

Sara Froikin, Assistant Regional Counsel  
U.S. Environmental Protection Agency, Region 2  
290 Broadway, 16<sup>th</sup> Floor  
New York, NY 10007  
Phone: 212-637-3263

---

**From:** Froikin, Sara  
**Sent:** Tuesday, April 07, 2020 9:42 AM  
**To:** Saunders, Gail (Law) <[gsaunder@law.nyc.gov](mailto:gsaunder@law.nyc.gov)>  
**Cc:** Orlin, Robert (DSNY) <[rorlin@dsny.nyc.gov](mailto:rorlin@dsny.nyc.gov)>; Grunin, Kate (DSNY) <[kgrunin@dsny.nyc.gov](mailto:kgrunin@dsny.nyc.gov)>; Villatora, Lilitana <[Villatora.Lilitana@epa.gov](mailto:Villatora.Lilitana@epa.gov)>  
**Subject:** RE: Request for Suspension of Field Checks in the DSNY Refrigerant Recovery Program

Dear Ms. Saunders,

Thank you for your email. Our understanding from your email is that NYC planned to continue having its DSNY employees take actions such as proper recovery of refrigerant from discarded appliances. We understand, however, that NYC was asking to temporarily cease having its Deputy Chiefs do daily field spot checks of DSNY employees, due to the burden on the Deputy Chiefs due to coronavirus.

Given that the Court recently granted termination of the Consent Decree in this matter, do you still believe that EPA approval is necessary for NYC to take this action?

Be well,

Sara Froikin, Assistant Regional Counsel  
U.S. Environmental Protection Agency, Region 2  
290 Broadway, 16<sup>th</sup> Floor  
New York, NY 10007  
Phone: 212-637-3263

---

**From:** Saunders, Gail (Law) <[gsaunder@law.nyc.gov](mailto:gsaunder@law.nyc.gov)>  
**Sent:** Friday, March 20, 2020 3:12 PM

**To:** Froikin, Sara <[Froikin.Sara@epa.gov](mailto:Froikin.Sara@epa.gov)>

**Cc:** Orlin, Robert (DSNY) <[rorlin@dsny.nyc.gov](mailto:rorlin@dsny.nyc.gov)>; Grunin, Kate (DSNY) <[kgrunin@dsny.nyc.gov](mailto:kgrunin@dsny.nyc.gov)>

**Subject:** Request for Suspension of Field Checks in the DSNY Refrigerant Recovery Program

Sara,

I write to follow up on our telephone conversation yesterday regarding the New York City Department of Sanitation's ("DSNY") request to suspend certain operations in the Refrigerant Recovery Program ("Program") due to the Corona virus, COVID-19 ("COVID-19") emergency in the City at this time. The Program is outlined in the attached letter from Kathleen Schmid to you dated November 16, 2016. This matter arose out of certain incidents where two DSNY employees improperly vented the refrigerant on certain appliances in August 2016. In response to these incidents DSNY, among other things, implemented a comprehensive training course and daily field spot checks of Program operations. These spot checks which are conducted by Deputy Chiefs, who are high level DSNY staff, were later reduced to two per week in October 2018. DSNY employees have consistently maintained a high level of compliance and we have been advised that no violations have been observed by the Deputy Chiefs who perform the field observations.

Due to the COVID-19 emergency the Deputy Chiefs have assumed additional responsibilities that are vital for public health and safety in New York City and DSNY is requesting permission from the United States Environmental Protection Agency ("EPA") to suspend all of these field checks to facilitate these critical activities. At this time, due to the evolving nature of the COVID-19 emergency, DSNY is unable to provide a time frame for the duration of the suspension of these field checks but DSNY would provide updates to EPA. If you need any additional information please let me know.

Thank you for your consideration in this matter.

Sincerely,

Gail Saunders

*Gail C. Saunders*  
*Senior Counsel*  
*Environmental Law Division*  
**Phone (212) 356-2075**  
**M (917) 375-8277**  
[gsaunders@law.nyc.gov](mailto:gsaunders@law.nyc.gov)

## Melcher, John

---

**From:** Borci, Todd  
**Sent:** Monday, March 30, 2020 3:23 PM  
**To:** Matthew Kissane  
**Subject:** RE: Dudley, MA MS4 Compliance

Matt:

Thanks for your call and message. As we discussed earlier, the guidance we had been providing to communities was document what you can and cannot do, and report that to us in an email, compliance report, or annual report. At the end of last week HQ issued a memorandum (at link below). As usual, it's a bit detailed but the point is essentially what we had been relaying to facilities previously.

<https://www.epa.gov/sites/production/files/2020-03/documents/oecamemooncovid19implications.pdf>

As we get closer to the Town's deadline, we may extend the deadline, or let the deadline pass and so long as the Town documents when they are able to, say, have Town Meetings again, and work to efficiently pass the ordinances as soon as possible, EPA would exercise enforcement discretion and not take any action. I think depending on what the national status is at that point, we may exercise either option.

I would suggest touching base with me around the end of May/beginning of June, and I can let you know how we are handling deadlines such as this.

Hope that helps and thanks for inquiring.

tb

---

Todd J. Borci  
Enforcement Officer  
Enforcement and Compliance Assurance Division  
U.S. EPA New England  
5 Post Office Square  
Suite 100 04-4  
Boston, MA 02109-3912  
(617) 918 -1358  
[borci.todd@epa.gov](mailto:borci.todd@epa.gov)

---

**From:** Matthew Kissane <[mkissane@fando.com](mailto:mkissane@fando.com)>  
**Sent:** Monday, March 30, 2020 3:11 PM  
**To:** Borci, Todd <[Borci.Todd@epa.gov](mailto:Borci.Todd@epa.gov)>  
**Subject:** Dudley, MA MS4 Compliance

Hi Todd,

I appreciate you taking the time to discuss Dudley's MS4 Compliance with me earlier. I have attached their Compliance Order for your reference.

Thank you and stay safe,  
Matt



Matthew Kissane, MS  
Environmental Geologist

Fuss & O'Neill, Inc. | 1550 Main Street, Suite 400 | Springfield, MA 01103

413.452.0445 x4461 | [mkissane@fando.com](mailto:mkissane@fando.com) | cell: 518.744.8909

[www.fando.com](http://www.fando.com) | [twitter](#) | [facebook](#) | [linkedin](#)

This e-mail message and any files transmitted with it are the exclusive intellectual property of Fuss & O'Neill. This message and any attached files may be privileged and confidential. If you have received this message in error, please delete this e-mail and attached files and immediately notify Fuss & O'Neill by sending a reply e-mail to the sender of this message. Thank you.



## Melcher, John

---

**Subject:** FW: Extension of stormwater sampling for Durham School Services  
**Attachments:** Final\_SusanBodine\_COVID19\_Memo\_3\_26\_2020.pdf

---

**From:** Handler, Neil  
**Sent:** Tuesday, April 14, 2020 10:44 AM  
**To:** Van Puymbrouck, Marc <[Marc.VanPuymbrouck@nellc.com](mailto:Marc.VanPuymbrouck@nellc.com)>  
**Cc:** Dart, Denny <[Dart.Denny@epa.gov](mailto:Dart.Denny@epa.gov)>; Tedder, Newton <[Tedder.Newton@epa.gov](mailto:Tedder.Newton@epa.gov)>; wdrouin.apexc.com <[wdrouin@apexc.com](mailto:wdrouin@apexc.com)>; Vuto, Michelle <[vuto.michelle@epa.gov](mailto:vuto.michelle@epa.gov)>; Kopf, Jeff <[Kopf.Jeff@epa.gov](mailto:Kopf.Jeff@epa.gov)>  
**Subject:** RE: Extension of stormwater sampling for Durham School Services

Marc,

The attached Susan Parker Bodine Memo provides some additional information on how to respond and report impacts associated with the COVID-19 Pandemic on Routine Compliance Monitoring and Reporting. One of the key items to remember is that it is very important for a facility to document what/how the COVID-19 pandemic specifically impacted a facility's ability to perform these activities. One way to do so for MSGP related quarterly visual assessments and inspections would be to use the regular forms the facility completes for its quarterly visual assessments and inspections and provide an explanation on these forms of how the COVID-19 Pandemic specifically impacted these activities. A copy of these forms (as well as all other forms required by the MSGP) should be kept with the facility's SWPPP.

Please let me know if you have additional questions.

Thanks,

Neil Handler  
Senior Enforcement Coordinator  
EPA Region 1  
5 Post Office Square, Suite 100 (OES04-4)  
Boston, MA 02109-3912

(617) 918-1334  
Fax (617) 918-0334  
[handler.neil@epa.gov](mailto:handler.neil@epa.gov)

---

**From:** Van Puymbrouck, Marc <[Marc.VanPuymbrouck@nellc.com](mailto:Marc.VanPuymbrouck@nellc.com)>  
**Sent:** Monday, April 13, 2020 10:10 AM  
**To:** Handler, Neil <[Handler.Neil@epa.gov](mailto:Handler.Neil@epa.gov)>  
**Cc:** Dart, Denny <[Dart.Denny@epa.gov](mailto:Dart.Denny@epa.gov)>; Tedder, Newton <[Tedder.Newton@epa.gov](mailto:Tedder.Newton@epa.gov)>; wdrouin.apexc.com <[wdrouin@apexc.com](mailto:wdrouin@apexc.com)>; Vuto, Michelle <[Vuto.Michelle@epa.gov](mailto:Vuto.Michelle@epa.gov)>; Kopf, Jeff <[Kopf.Jeff@epa.gov](mailto:Kopf.Jeff@epa.gov)>  
**Subject:** RE: Extension of stormwater sampling for Durham School Services

Neil,

I really appreciate this information!

Is there any information like this regarding monthly inspections and visual storm water inspections?

Thank you

**Marc VanPuymbrouck**

*Environmental Compliance Manager*

Direct: 630-821-9058

Cell: 630-297-1235

[Marc.VanPuymbrouck@nellc.com](mailto:Marc.VanPuymbrouck@nellc.com)

---

**From:** Handler, Neil <[Handler.Neil@epa.gov](mailto:Handler.Neil@epa.gov)>

**Sent:** Monday, April 13, 2020 7:43 AM

**To:** Van Puymbrouck, Marc <[Marc.VanPuymbrouck@nellc.com](mailto:Marc.VanPuymbrouck@nellc.com)>

**Cc:** Dart, Denny <[Dart.Denny@epa.gov](mailto:Dart.Denny@epa.gov)>; Tedder, Newton <[Tedder.Newton@epa.gov](mailto:Tedder.Newton@epa.gov)>; wdrouin.apexc.com <[wdrouin@apexc.com](mailto:wdrouin@apexc.com)>; Vuto, Michelle <[Vuto.Michelle@epa.gov](mailto:Vuto.Michelle@epa.gov)>; Kopf, Jeff <[Kopf.Jeff@epa.gov](mailto:Kopf.Jeff@epa.gov)>

**Subject:** RE: Extension of stormwater sampling for Durham School Services

Marc,

I wanted provide you with a slight update on what was decided by EPA HQs for the NODI code for facilities to use to identify impacts related to the COVID-19 Pandemic. Please see the updated info below – please also feel free to contact me if you have any questions.

Thanks,

Neil Handler

Senior Enforcement Coordinator

EPA Region 1

5 Post Office Square, Suite 100 (OES04-4)

Boston, MA 02109-3912

(617) 918-1334

Fax (617) 918-0334

[handler.neil@epa.gov](mailto:handler.neil@epa.gov)

## **IMPORTANT – COVID-19 AND COMPLYING WITH YOUR NPDES PERMIT**

Facilities are expected to make every effort to comply with their NPDES permits. However, if for reasons related to COVID-19, you are able to obtain some but not all of your samples or analyze some but not all of your samples required by your permit, please submit your discharge monitoring reports (DMRs) through NetDMR by the due date with the information you have been able to obtain. Please also provide an explanation in either the comment section of the DMR or in a separate attachment describing how COVID-19 impacted your ability to take or analyze all of your required samples. **If you are not able to sample or analyze any of the samples required by your permit, please submit your DMRs through NetDMR by the due date using**

**the No Data Indicator or NODI code of “Z” - “COVID-19”. When using the NODI code Z, a facility should provide an explanation in either the comment section of the DMR or in a separate attachment added to the DMR.** The Explanation should identify the specific reasons for the sampling/reporting delay and how COVID-19 was the cause of the noncompliance. Details related to NPDES Compliance and Reporting in Response to the COVID-19 Pandemic can be found at: <https://netdmr.zendesk.com/hc/en-us/articles/360041746691-Covid-19-Information-Page>.

---

**From:** Handler, Neil  
**Sent:** Thursday, March 26, 2020 2:58 PM  
**To:** Van Puymbrouck, Marc <[Marc.VanPuymbrouck@nellc.com](mailto:Marc.VanPuymbrouck@nellc.com)>  
**Cc:** Dart, Denny <[Dart.Denny@epa.gov](mailto:Dart.Denny@epa.gov)>; Tedder, Newton <[Tedder.Newton@epa.gov](mailto:Tedder.Newton@epa.gov)>; [wdrouin.apexc.com](mailto:wdrouin.apexc.com) <[wdrouin@apexc.com](mailto:wdrouin@apexc.com)>; Vuto, Michelle <[vuto.michelle@epa.gov](mailto:vuto.michelle@epa.gov)>; Kopf, Jeff <[Kopf.Jeff@epa.gov](mailto:Kopf.Jeff@epa.gov)>  
**Subject:** RE: Extension of stormwater sampling for Durham School Services

Marc,

I think the plan would be to have these letters be added as an attachment to any DMRs that were being submitted through NetDMR by a facility that was being impacted by the COVID-19 virus. I think we would expect the letters to contain information specific to that facility rather than be a general form letter that is being sent to EPA or the MassDEP.

Thanks,

Neil Handler  
Senior Enforcement Coordinator  
EPA Region 1  
5 Post Office Square, Suite 100 (OES04-4)  
Boston, MA 02109-3912

(617) 918-1334  
Fax (617) 918-0334  
[handler.neil@epa.gov](mailto:handler.neil@epa.gov)

---

**From:** Van Puymbrouck, Marc <[Marc.VanPuymbrouck@nellc.com](mailto:Marc.VanPuymbrouck@nellc.com)>  
**Sent:** Thursday, March 26, 2020 2:53 PM  
**To:** Handler, Neil <[Handler.Neil@epa.gov](mailto:Handler.Neil@epa.gov)>  
**Cc:** Dart, Denny <[Dart.Denny@epa.gov](mailto:Dart.Denny@epa.gov)>; Tedder, Newton <[Tedder.Newton@epa.gov](mailto:Tedder.Newton@epa.gov)>; [wdrouin.apexc.com](mailto:wdrouin.apexc.com) <[wdrouin@apexc.com](mailto:wdrouin@apexc.com)>; Vuto, Michelle <[Vuto.Michelle@epa.gov](mailto:Vuto.Michelle@epa.gov)>; Kopf, Jeff <[Kopf.Jeff@epa.gov](mailto:Kopf.Jeff@epa.gov)>  
**Subject:** RE: Extension of stormwater sampling for Durham School Services

Neil,

Appreciate the insight, and I completely understand.

If I were to put a letter together regarding our inability to sample, would this letter go to you? Or who would I issue this to? Thanks

**Marc VanPuymbrouck**  
*Environmental Compliance Manager*  
Direct: 630-821-9058  
Cell: 630-297-1235  
[Marc.VanPuymbrouck@nellc.com](mailto:Marc.VanPuymbrouck@nellc.com)

---

**From:** Handler, Neil <[Handler.Neil@epa.gov](mailto:Handler.Neil@epa.gov)>  
**Sent:** Thursday, March 26, 2020 1:50 PM  
**To:** Van Puymbrouck, Marc <[Marc.VanPuymbrouck@nellc.com](mailto:Marc.VanPuymbrouck@nellc.com)>  
**Cc:** Dart, Denny <[Dart.Denny@epa.gov](mailto:Dart.Denny@epa.gov)>; Tedder, Newton <[Tedder.Newton@epa.gov](mailto:Tedder.Newton@epa.gov)>; [wdrouin.apexc.com](mailto:wdrouin.apexc.com)  
<[wdrouin@apexc.com](mailto:wdrouin@apexc.com)>; Vuto, Michelle <[Vuto.Michelle@epa.gov](mailto:Vuto.Michelle@epa.gov)>; Kopf, Jeff <[Kopf.Jeff@epa.gov](mailto:Kopf.Jeff@epa.gov)>  
**Subject:** RE: Extension of stormwater sampling for Durham School Services

Hi Marc,

No excuse, but the wheels of government move very slowly especially when the government is trying to issue guidance to cover a multitude of different programs and media.

In general what I can tell you is that we will be looking for individuals/facilities to make every effort to comply with their NPDES permits but will likely provide guidance to facilities who are unable to meet their permit/sampling/reporting requirements due to COVID-19 and identify a specific No Data Indicator or NODI code for facilities to use in the reporting of DMRs. In addition we will be looking for facilities to provide a letter or report with their DMRs which identifies the specific impacts COVID-19 has had on your operations to prevent the compliance with the facility's permit.

Hope this helps a little.

Thanks,

Neil Handler  
Senior Enforcement Coordinator  
EPA Region 1  
5 Post Office Square, Suite 100 (OES04-4)  
Boston, MA 02109-3912

(617) 918-1334  
Fax (617) 918-0334  
[handler.neil@epa.gov](mailto:handler.neil@epa.gov)

---

**From:** Van Puymbrouck, Marc <[Marc.VanPuymbrouck@nellc.com](mailto:Marc.VanPuymbrouck@nellc.com)>  
**Sent:** Thursday, March 26, 2020 2:21 PM  
**To:** Handler, Neil <[Handler.Neil@epa.gov](mailto:Handler.Neil@epa.gov)>; Vuto, Michelle <[Vuto.Michelle@epa.gov](mailto:Vuto.Michelle@epa.gov)>  
**Cc:** Dart, Denny <[Dart.Denny@epa.gov](mailto:Dart.Denny@epa.gov)>; Tedder, Newton <[Tedder.Newton@epa.gov](mailto:Tedder.Newton@epa.gov)>; [wdrouin.apexc.com](mailto:wdrouin.apexc.com)  
<[wdrouin@apexc.com](mailto:wdrouin@apexc.com)>  
**Subject:** RE: Extension of stormwater sampling for Durham School Services  
**Importance:** High

Hello,

Wanted to follow up on this. I have not gotten a response regarding our MA NPDES requirements. Did we get any type of update? Thank you

**Marc VanPuymbrouck**

*Environmental Compliance Manager*

Direct: 630-821-9058

Cell: 630-297-1235

[Marc.VanPuymbrouck@nellc.com](mailto:Marc.VanPuymbrouck@nellc.com)

---

**From:** Handler, Neil <[Handler.Neil@epa.gov](mailto:Handler.Neil@epa.gov)>

**Sent:** Monday, March 23, 2020 3:19 PM

**To:** Van Puymbrouck, Marc <[Marc.VanPuymbrouck@nellc.com](mailto:Marc.VanPuymbrouck@nellc.com)>; Vuto, Michelle <[Vuto.Michelle@epa.gov](mailto:Vuto.Michelle@epa.gov)>

**Cc:** Dart, Denny <[Dart.Denny@epa.gov](mailto:Dart.Denny@epa.gov)>; Tedder, Newton <[Tedder.Newton@epa.gov](mailto:Tedder.Newton@epa.gov)>

**Subject:** RE: Extension of stormwater sampling for Durham School Services

Hi Marc,

Got your email and we are in communication with our management here in the Region as well as at EPA HQs to come up with a response to provide you as well as other facilities about how they can proceed. Hope to have something soon to share with you.

Thanks for your patience,

Neil Handler

Senior Enforcement Coordinator

EPA Region 1

5 Post Office Square, Suite 100 (OES04-4)

Boston, MA 02109-3912

(617) 918-1334

Fax (617) 918-0334

[handler.neil@epa.gov](mailto:handler.neil@epa.gov)

---

**From:** Van Puymbrouck, Marc <[Marc.VanPuymbrouck@nellc.com](mailto:Marc.VanPuymbrouck@nellc.com)>

**Sent:** Monday, March 23, 2020 2:31 PM

**To:** Vuto, Michelle <[Vuto.Michelle@epa.gov](mailto:Vuto.Michelle@epa.gov)>

**Cc:** Handler, Neil <[Handler.Neil@epa.gov](mailto:Handler.Neil@epa.gov)>

**Subject:** RE: Extension of stormwater sampling for Durham School Services

Thank you!

**Marc VanPuymbrouck**

*Environmental Compliance Manager*

Direct: 630-821-9058

Cell: 630-297-1235  
[Marc.VanPuymbrouck@nellc.com](mailto:Marc.VanPuymbrouck@nellc.com)

---

**From:** Vuto, Michelle <[Vuto.Michelle@epa.gov](mailto:Vuto.Michelle@epa.gov)>  
**Sent:** Monday, March 23, 2020 1:28 PM  
**To:** Van Puymbrouck, Marc <[Marc.VanPuymbrouck@nellc.com](mailto:Marc.VanPuymbrouck@nellc.com)>  
**Cc:** Handler, Neil <[Handler.Neil@epa.gov](mailto:Handler.Neil@epa.gov)>  
**Subject:** FW: Extension of stormwater sampling for Durham School Services

Hi Marc,

I am forwarding your email to our enforcement office, who is managing such requests.

Best,  
Michelle

Michelle Vuto  
Stormwater & Construction Permits  
U.S. EPA Region 1  
5 Post Office Square (06-4)  
Boston, MA 02109-3912  
617-918-1222

---

**From:** Van Puymbrouck, Marc <[Marc.VanPuymbrouck@nellc.com](mailto:Marc.VanPuymbrouck@nellc.com)>  
**Sent:** Monday, March 23, 2020 12:41 PM  
**To:** Schiffman, Laura (DEP) <[laura.schifman@state.ma.us](mailto:laura.schifman@state.ma.us)>; Vuto, Michelle <[Vuto.Michelle@epa.gov](mailto:Vuto.Michelle@epa.gov)>  
**Subject:** RE: Extension of stormwater sampling for Durham School Services

Thank you,

Michelle please see my inquire below. The virus has effected our business and we are closing many of our locations in MA. Is there any type of extension or waiver for our SW responsibilities at this time due to our locations not having anyone onsite? Please advise, thank you

**Marc VanPuymbrouck**  
*Environmental Compliance Manager*  
Direct: 630-821-9058  
Cell: 630-297-1235  
[Marc.VanPuymbrouck@nellc.com](mailto:Marc.VanPuymbrouck@nellc.com)

---

**From:** Schiffman, Laura (DEP) <[laura.schifman@state.ma.us](mailto:laura.schifman@state.ma.us)>  
**Sent:** Monday, March 23, 2020 11:35 AM  
**To:** Van Puymbrouck, Marc <[Marc.VanPuymbrouck@nellc.com](mailto:Marc.VanPuymbrouck@nellc.com)>  
**Cc:** [vuto.michelle@epa.gov](mailto:vuto.michelle@epa.gov)  
**Subject:** Re: Extension of stormwater sampling for Durham School Services

Thanks Marc,

In Massachusetts NPDES permits are issued by the federal EPA. I am copying my colleague there, Michelle Vuto here, who will be able to assist you.

Laura

Laura Schiffman, Ph.D.  
Stormwater Coordinator  
Massachusetts Department of Environmental Protection

[p] (617) 556-1157  
[e] [laura.schiffman@mass.gov](mailto:laura.schiffman@mass.gov)  
[w] <https://www.mass.gov/info-details/stormwater>

---

**From:** Van Puymbrouck, Marc <[Marc.VanPuymbrouck@nellc.com](mailto:Marc.VanPuymbrouck@nellc.com)>  
**Sent:** Monday, March 23, 2020 12:33 PM  
**To:** Schiffman, Laura (DEP)  
**Subject:** RE: Extension of stormwater sampling for Durham School Services

CAUTION: This email originated from a sender outside of the Commonwealth of Massachusetts mail system. Do not click on links or open attachments unless you recognize the sender and know the content is safe.

They are industrial permits, here are my permit numbers as well:

MAR053986
MAR05J00Y
MAR053987

**Marc VanPuymbrouck**  
*Environmental Compliance Manager*  
Direct: 630-821-9058  
Cell: 630-297-1235  
[Marc.VanPuymbrouck@nellc.com](mailto:Marc.VanPuymbrouck@nellc.com)



---

From: Schiffman, Laura (DEP) <[laura.schifman@state.ma.us](mailto:laura.schifman@state.ma.us)>  
Sent: Monday, March 23, 2020 11:20 AM  
To: Van Puymbrouck, Marc <[Marc.VanPuymbrouck@nellc.com](mailto:Marc.VanPuymbrouck@nellc.com)>  
Subject: Re: Extension of stormwater sampling for Durham School Services

External Message: Do not click links or open attachments unless you recognize the source of the email and know the contents are safe.

Marc,

could you let me know which kind of NPDES permits you are authorized to discharge under? Then I can forward this inquiry to the appropriate person.

thanks,

Laura

Laura Schiffman, Ph.D.  
Stormwater Coordinator  
Massachusetts Department of Environmental Protection

[p] (617) 556-1157  
[e] [laura.schifman@mass.gov](mailto:laura.schifman@mass.gov)  
[w] <https://www.mass.gov/info-details/stormwater>

---

From: Van Puymbrouck, Marc <[Marc.VanPuymbrouck@nellc.com](mailto:Marc.VanPuymbrouck@nellc.com)>  
Sent: Monday, March 23, 2020 11:53 AM  
To: Schiffman, Laura (DEP)  
Subject: RE: Extension of stormwater sampling for Durham School Services

CAUTION: This email originated from a sender outside of the Commonwealth of Massachusetts mail system. Do not click on links or open attachments unless you recognize the sender and know the content is safe.

Hello,

I represent a company called Durham School Services. We have multiple locations that operate under NPDES Permits which require sampling and inspections.

The Corona Virus has greatly effected our operations, and due to concerns of health and safety, we are inquiring if there is going to be an extension granted for these inspection/monitoring or some sort of exception waiver to not have to sample/monitor for this period of time. Please let us know, thank you



**Marc VanPuymbrouck**

*Environmental Compliance Manager*

Direct: 630-821-9058

Cell: 630-297-1235

[Marc.VanPuymbrouck@nellc.com](mailto:Marc.VanPuymbrouck@nellc.com)

The information contained in or attached to this e-mail is intended only for the use of the addressee. If you are not the intended recipient of this e-mail, or a person responsible for delivering it to the intended recipient, you are strictly prohibited from disclosing, copying, distributing, or retaining this e-mail or any part of it. It may contain information which is confidential and/or covered by legal, professional or other privilege under applicable law. If you have received this e-mail in error, please notify the author by replying to this e-mail immediately and delete this e-mail from your system. The views expressed in this email may not necessary be the views held by the organization. E-mail transmission cannot be guaranteed to be secure or error-free as information could be intercepted, corrupted, lost, destroyed, arrive late or incomplete, or contain viruses. The sender therefore does not accept liability for any errors or omissions in the contents of this message, which arise as a result of e-mail transmission.

The information contained in or attached to this e-mail is intended only for the use of the addressee. If you are not the intended recipient of this e-mail, or a person responsible for delivering it to the intended recipient, you are strictly prohibited from disclosing, copying, distributing, or retaining this e-mail or any part of it. It may contain information which is confidential and/or covered by legal, professional or other privilege under applicable law. If you have received this e-mail in error, please notify the author by replying to this e-mail immediately and delete this e-mail from your system. The views expressed in this email may not necessary be the views held by the organization. E-mail transmission cannot be guaranteed to be secure or error-free as information could be intercepted, corrupted, lost, destroyed, arrive late or incomplete, or contain viruses. The sender therefore does not accept liability for any errors or omissions in the contents of this message, which arise as a result of e-mail transmission.

The information contained in or attached to this e-mail is intended only for the use of the addressee. If you are not the intended recipient of this e-mail, or a person responsible for delivering it to the intended recipient, you are strictly prohibited from disclosing, copying, distributing, or retaining this e-mail or any part of it. It may contain information which is confidential and/or covered by legal, professional or other privilege under applicable law. If you have received this e-mail in error, please notify the author by replying to this e-mail immediately and delete this e-mail from your system. The views expressed in this email may not necessary be the views held by the organization. E-mail transmission cannot be guaranteed to be secure or error-free as information could be intercepted, corrupted, lost, destroyed, arrive late or incomplete, or contain viruses. The sender therefore does not accept liability for any errors or omissions in the contents of this message, which arise as a result of e-mail transmission.

The information contained in or attached to this e-mail is intended only for the use of the addressee. If you are not the intended recipient of this e-mail, or a person responsible for delivering it to the intended recipient, you are strictly prohibited from disclosing, copying, distributing, or retaining this e-mail or any part of it. It may contain information which is confidential and/or covered by legal, professional or other privilege under applicable law. If you have received this e-mail in error, please notify the author by replying to this e-mail immediately and delete this e-mail from your system. The views expressed in this email may not necessary be the views held by the organization. E-mail transmission cannot be guaranteed to be secure or error-free as information could be intercepted, corrupted, lost, destroyed, arrive late or incomplete, or contain viruses. The sender therefore does not accept liability for any errors or omissions in the contents of this message, which arise as a result of e-mail transmission.

The information contained in or attached to this e-mail is intended only for the use of the addressee. If you are not the intended recipient of this e-mail, or a person responsible for delivering it to the intended recipient, you are strictly prohibited from disclosing, copying, distributing, or retaining this e-mail or any part of it. It may contain information which is confidential and/or covered by legal, professional or other privilege under applicable law. If you have received this e-mail in error, please notify the author by replying to this e-mail immediately and delete this e-mail from your

system. The views expressed in this email may not necessary be the views held by the organization. E-mail transmission cannot be guaranteed to be secure or error-free as information could be intercepted, corrupted, lost, destroyed, arrive late or incomplete, or contain viruses. The sender therefore does not accept liability for any errors or omissions in the contents of this message, which arise as a result of e-mail transmission.

The information contained in or attached to this e-mail is intended only for the use of the addressee. If you are not the intended recipient of this e-mail, or a person responsible for delivering it to the intended recipient, you are strictly prohibited from disclosing, copying, distributing, or retaining this e-mail or any part of it. It may contain information which is confidential and/or covered by legal, professional or other privilege under applicable law. If you have received this e-mail in error, please notify the author by replying to this e-mail immediately and delete this e-mail from your system. The views expressed in this email may not necessary be the views held by the organization. E-mail transmission cannot be guaranteed to be secure or error-free as information could be intercepted, corrupted, lost, destroyed, arrive late or incomplete, or contain viruses. The sender therefore does not accept liability for any errors or omissions in the contents of this message, which arise as a result of e-mail transmission.

The information contained in or attached to this e-mail is intended only for the use of the addressee. If you are not the intended recipient of this e-mail, or a person responsible for delivering it to the intended recipient, you are strictly prohibited from disclosing, copying, distributing, or retaining this e-mail or any part of it. It may contain information which is confidential and/or covered by legal, professional or other privilege under applicable law. If you have received this e-mail in error, please notify the author by replying to this e-mail immediately and delete this e-mail from your system. The views expressed in this email may not necessary be the views held by the organization. E-mail transmission cannot be guaranteed to be secure or error-free as information could be intercepted, corrupted, lost, destroyed, arrive late or incomplete, or contain viruses. The sender therefore does not accept liability for any errors or omissions in the contents of this message, which arise as a result of e-mail transmission.

## Mceathron, Kimberly

---

**From:** Modigliani, Justine  
**Sent:** Friday, April 3, 2020 4:55 PM  
**To:** Mceathron, Kimberly  
**Subject:** Fwd: Response to RFI, CWA-IR-19-018 for US Concrete  
**Attachments:** image001.png; ATT00001.htm; image002.png; ATT00002.htm; image003.png; ATT00003.htm; image004.png; ATT00004.htm; image005.png; ATT00005.htm; image006.png; ATT00006.htm; image007.png; ATT00007.htm; AprilResponseCV.docx; ATT00008.htm

Here is what I sent. Sorry about that! Please add it as a highlight for next week. Pete wants to keep track of extensions related to Corona.

Sent from my iPhone

Begin forwarded message:

**From:** "Modigliani, Justine" <Modigliani.Justine@epa.gov>  
**Date:** April 1, 2020 at 9:37:00 PM EDT  
**To:** Cristen Solor <csolor@complianceplusservices.com>  
**Cc:** Jeff Apolito <japolito@us-concrete.com>, Scott Unkel <sunckle@us-concrete.com>, Robert McGehee <rmcgehee@us-concrete.com>, Matt Lapp <mlapp@complianceplusservices.com>, Matt Lapp <mlapp@complianceplusservices.com>  
**Subject:** FW: Response to RFI, CWA-IR-19-018 for US Concrete

Hello Mr. Solor,

I hope this email finds you in good health. We have reviewed your request for an extension and given the current circumstances, we are supportive of extending the deadline as requested, until August 1, 2020, with the implementation of the short term measures described below.

Please keep us informed should any other questions or concerns arise.

Thank you,

Justine Modigliani, Chief  
CWA Compliance Section

---

**From:** Cristen Solor <[csolor@complianceplusservices.com](mailto:csolor@complianceplusservices.com)>  
**Sent:** Wednesday, April 1, 2020 9:38 AM  
**To:** Mceathron, Kimberly <[McEathron.Kimberly@epa.gov](mailto:McEathron.Kimberly@epa.gov)>; Jeff Apolito <[japolito@us-concrete.com](mailto:japolito@us-concrete.com)>; Scott Unkel <[sunckle@us-concrete.com](mailto:sunckle@us-concrete.com)>; Robert McGehee <[rmcgehee@us-concrete.com](mailto:rmcgehee@us-concrete.com)>  
**Cc:** Matt Lapp <[mlapp@complianceplusservices.com](mailto:mlapp@complianceplusservices.com)>  
**Subject:** RE: Response to RFI, CWA-IR-19-018 for US Concrete

Good morning Kim,

I apologize for the delay in response. I wanted to make sure I had the most up to date information.

1. The facilities are still operating, although in certain cases at reduced capacity and hours due to decreased demand.
2. In most cases, the regular staff are present on-site, although there is periodic reduction based on staffing needs.
3. Regulatory staff in New York City have not responded to any correspondence for at least 2 weeks. New York State staff have not responded to submitted information on 3/6/2020, although it is difficult to determine whether this is just normal delays or a result of reduced staffing /hours.
4. Specific staff on each site are trained on stormwater requirements and those staff are still working. Short term measures at the College Point (31<sup>st</sup> Ave., Queens) and Smith Street Plant (381 Hamilton Ave., Brooklyn) primarily consist of working with the water disposal contractor to remove process wastewater as required. Additionally, at Smith Street, there were improvements completed to the trench drain system that have increased stormwater and process water capture. At the Chelsea Road plant, there is no site discharge due to the berm that exists around the discharge point. Part of the planned site improvements will be involve re-opening a pathway for discharge.

Please let me know if you have any other questions. Stay well.

Cristen

---

**From:** Mceathron, Kimberly <[McEathron.Kimberly@epa.gov](mailto:McEathron.Kimberly@epa.gov)>

**Sent:** Monday, March 30, 2020 7:27 AM

**To:** Cristen Solor <[csolor@complianceplusservices.com](mailto:csolor@complianceplusservices.com)>; Jeff Apolito <[japolito@us-concrete.com](mailto:japolito@us-concrete.com)>; Scott Unkel <[sunkle@us-concrete.com](mailto:sunkle@us-concrete.com)>; Robert McGehee <[rmcgehee@us-concrete.com](mailto:rmcgehee@us-concrete.com)>

**Cc:** Matt Lapp <[mlapp@complianceplusservices.com](mailto:mlapp@complianceplusservices.com)>

**Subject:** RE: Response to RFI, CWA-IR-19-018 for US Concrete

Hi Cristen,

We've reviewed your letter and were hoping you could provide some more details regarding the current operations at these facilities. Understandably, there are a lot of uncertainties right now but we were hoping you could answer some general questions:

1. Are the facilities active?
2. Are there some staff present on-site?
3. How have regulatory staff schedules been affected?
4. If the facilities are active, and there are some staff present on-site, have the staff on-site been trained on stormwater requirements and what short-term measures are they implementing to prevent unauthorized discharges of process wastewater?

Thanks and take care,

Kim

---

Kimberly McEathron  
Water Compliance Branch  
United States Environmental Protection Agency, Region 2

290 Broadway, New York, NY 10007  
Phone: 212-637-4228

---

**From:** Cristen Solor <[csolor@complianceplusservices.com](mailto:csolor@complianceplusservices.com)>

**Sent:** Thursday, March 26, 2020 2:05 PM

**To:** Mceathron, Kimberly <[McEathron.Kimberly@epa.gov](mailto:McEathron.Kimberly@epa.gov)>; Jeff Apolito <[japolito@us-concrete.com](mailto:japolito@us-concrete.com)>;  
Scott Unkel <[sunckle@us-concrete.com](mailto:sunckle@us-concrete.com)>; Robert McGehee <[rmcgehee@us-concrete.com](mailto:rmcgehee@us-concrete.com)>

**Cc:** Matt Lapp <[mlapp@complianceplusservices.com](mailto:mlapp@complianceplusservices.com)>

**Subject:** Response to RFI, CWA-IR-19-018 for US Concrete

Hi Ms. McEathron,

Please see the attached request for extension for resolution of issues related to the US EPA RFI to US Concrete. Thank you for your consideration of this matter. Please let me know if you have any questions or concerns.

Cristen

**Cristen L. Solor, PWS**  
**Senior Project Manager**



GLOBAL PARTNERS LP 800 South Street, Suite 500, P.O. Box 9161, Waltham, MA 02454-9161 ph: 781-894-8800 fx: 781-398-4165

March 25, 2020

**Delivery Via Email: eescdcopy@usdoj.gov**

EES Case Management Unit  
Environmental and Natural Resources Division  
U.S. Department of Justice  
P.O. Box 7611  
Washington, D.C. 20044-7611

**Delivery Via CDX electronic system ([https://cdx.gov/epa\\_home.asp](https://cdx.gov/epa_home.asp))**

Christine Sansevero (via email)  
Senior Enforcement Coordinator  
U.S. EPA, Region 1  
5 Post Office Square  
Suite 100 – OES04-2  
Boston, MA02109-3912

Tom Olivier (via email)  
Enforcement Counsel  
U.S. EPA, Region 1  
5 Post Office Square  
Suite 100 – OES04-2  
Boston, MA02109-3912

Re: Consent Decree Force Majeure Notice – Supplemental Environmental Project  
United States of America v. Global Partners LP, Global Companies LLC and  
Chelsea Sandwich, LLC, Civil No. 2:19-cv-00122-DBH  
Global South Portland, ME Terminal, 1 Clark Road, South Portland, ME  
DJ #90-5-2-1-11428

To Whom It May Concern:

Global Partners LP, Global Companies LLC and Chelsea Sandwich, LLC (collectively, “Global”) hereby provide notice pursuant to Article IX, Paragraphs 43 and 44 of the Consent Decree executed between Global and the United States of America and entered by the United States District Court, District of Maine on December 19, 2019 (the “Consent Decree”) of a force majeure event that will delay the full implementation of the Supplemental Environmental Project (“SEP”) required by Article VI of the Consent Decree.

Paragraph 43 of the Consent Decree defines “force majeure” as “any event arising from causes beyond the control of [Global or Global’s] contractors, that delays or prevents the performance of any obligation under this Consent Decree despite [Global’s] best efforts to fulfill the obligation.” Pursuant to Paragraph 44 of the Consent Decree, if any force majeure event occurs that delays performance under the Consent Decree, Global must give EPA 72-hour notice of the event and a provide a subsequent 7-day notice which includes an:

[www.globalp.com](http://www.globalp.com)

C:\Users\kkrufe\Desktop\ TO Be Filed\South Portland SEP 3 25-20 doc.docx

explanation and description of the reasons for the delay; the anticipated duration of the delay; all actions taken or to be taken to prevent or minimize the delay; a schedule for implementation of any measures to be taken to prevent or mitigate the delay or the effect of the delay; Defendants' rationale for attributing such delay to a force majeure event if it intends to assert such a claim ...

This letter serves as both the 72-hour and 7-day notice to EPA pursuant to Paragraph 44 of the Consent Decree. Global has been advised by its administrator of the SEP, the American Lung Association ("ALA"), that due to current conditions outside the control of ALA and Global related to the COVID-19 outbreak, the state of emergency imposed by the state and federal governments, and the March 24, 2020 Executive Order issued by the Governor of the State of Maine restricting non-essential business activity, full implementation of the SEP will be delayed.

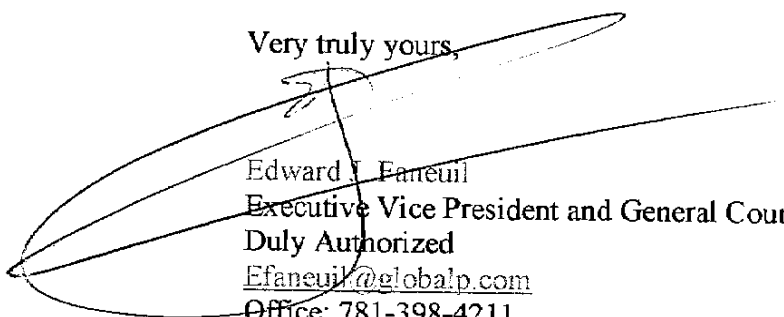
Global has made best efforts to implement the SEP pursuant to the Consent Decree and the SEP Work Plan approved by EPA on February 21, 2020. On March 5, 2020, Global funded the SEP (\$150,000.00) and the ALA's administrative costs (\$22,500.00). ALA has prepared the marketing materials and program packets (application materials) and reached out to the retailers who will undertake the woodstove replacements funded by the SEP. ALA has advised Global that full implementation is not feasible as retailers are restricted in their ability to undertake work and it is unlikely that potential users of the program are prepared to have contractors in their homes during this emergency.

However, although the full extent of the delay is unknown due to the uncertainty surrounding the timing of emergency restrictions, Global anticipates at least a six month delay in the full implementation of the SEP. This delay in implementation is also likely to delay completion of the SEP beyond the two years permitted by the Consent Decree. To mitigate this delay, Global has advised the ALA that should any of the retailers be able to undertake work under the SEP, or if interested applicants inquire, the SEP may be implemented on a case by case basis in the interim.

Global requests that EPA (1) acknowledge the current crisis due to the COVID-19 outbreak constitutes a force majeure event; (2) approve the six month delay in the full implementation of the SEP as outlined in the SEP Work Plan; and (3) acknowledge that compliance with the two-year timeframe to complete the SEP is likely to require a six month extension pursuant to the Consent Decree.

Global will continue to notify EPA as more information on the timing for implementation of the SEP becomes available and will update any information on implementation of the SEP in the Status Reports required by the Consent Decree.

Very truly yours,



Edward J. Faneuil  
Executive Vice President and General Counsel,  
Duly Authorized  
[Efaneuil@globalp.com](mailto:Efaneuil@globalp.com)  
Office: 781-398-4211

EJF/lrs

[www.globalp.com](http://www.globalp.com)

J:\Legal\LR\S\South Portland SEP 3-25-20.doc.docx

Cc Tom Keefe  
Dylan Remley  
Michael Leon  
Matt Snell



**Melcher, John**

---

**Subject:** FW: Global Partners LP - Request for extension of SEP schedule

---

**From:** Olivier, Tom

**Sent:** Tuesday, March 31, 2020 3:10 PM

**To:** [efaneuil@globalp.com](mailto:efaneuil@globalp.com); Tom Keefe <[TKeefe@globalp.com](mailto:TKeefe@globalp.com)>

**Cc:** Michael A. Leon <[MLeon@nutter.com](mailto:MLeon@nutter.com)>; Weigert, David (ENRD) <[David.Weigert@usdoj.gov](mailto:David.Weigert@usdoj.gov)>; Bryan, Patrick (ENRD) <[Patrick.Bryan@usdoj.gov](mailto:Patrick.Bryan@usdoj.gov)>

**Subject:** Global Partners LP - Request for extension of SEP schedule

Dear Mr. Faneuil:

The U.S. Environmental Protection Agency received your notice, dated March 25, 2020, seeking a six-month extension for the full implementation of the supplemental environmental project (SEP) under the Global Partners LP Consent Decree, Civil Action No. 2:19-cv-00122-DBH, on the basis of a *force majeure* event caused by circumstances related to the COVID-19 outbreak. Your notice also asks that EPA acknowledge that the two-year SEP timeframe is likely to require a six-month extension.

Under the circumstances, EPA will treat your request as a request for an extension of the SEP schedule under Paragraph 14(g) of the Consent Decree and not the *force majeure* provision. Paragraph 14(g) provides that EPA may grant such requests in its sole, unreviewable discretion. EPA agrees that in light of the COVID-19 pandemic and the resulting emergency measures required and recommended by federal, state and local authorities, it appears unlikely that the SEP will be completed within two years of EPA's approval of the Work Plan dated February 21, 2020, despite Defendants' best efforts to implement the project. EPA grants a six-month extension of the SEP schedule. Accordingly, Global shall complete the SEP no later than two years and six months from February 21, 2020.

Sincerely,

Thomas T. Olivier  
Senior Enforcement Counsel  
EPA Region 1

**Melcher, John**

---

**Subject:** FW: Greater Lawrence Sanitary District

---

**From:** Cheri R. Cousens <[CCousens@GLSD.org](mailto:CCousens@GLSD.org)>  
**Sent:** Tuesday, April 28, 2020 10:52 AM  
**To:** Brander, Kevin (DEP) <[kevin.brandier@mass.gov](mailto:kevin.brandier@mass.gov)>  
**Cc:** Colleen M. Spero <[CSpero@GLSD.org](mailto:CSpero@GLSD.org)>; Brett Leavitt <[BLeavitt@GLSD.org](mailto:BLeavitt@GLSD.org)>  
**Subject:** Greater Lawrence Sanitary District

CAUTION: This email originated from a sender outside of the Commonwealth of Massachusetts mail system. Do not click on links or open attachments unless you recognize the sender and know the content is safe.

Hello Kevin,

Hope you are doing well through all of THIS.

GLSD has two requests for relief due to the COVID 19 situation.

- 1) GLSD's Approval of Suitability permit for our Type I biosolid pellets was issued on November 24, 2015. In accordance with 310 CMR 32.00 GLSD is required to submit a renewal application to DEP by May 24, 2020.
- 2) GLSD's NPDES Permit Section I. C. 5. a requires a Collection System O & M Plan within 6 months of the permit becoming active.

Due to the current situation, GLSD is requesting an extension to September 1, 2020 for the submittal of the two above mentioned items.

Regards,

Cheri R. Cousens, P.E.  
Executive Director  
Greater Lawrence Sanitary District  
240 Charles Street  
North Andover, MA 01845  
Ph. 978-685-1612  
Fax 978-685-7790

## Melcher, John

---

**From:** Koopman, Douglas  
**Sent:** Monday, May 11, 2020 3:06 PM  
**To:** CCousens@GLSD.org  
**Subject:** Covid extension

Ms. Cousens

Thank for your email requesting guidance with respect to submitting your Collection System O&M Plan under your NPDES permit.

In response to noncompliance related to the COVID-19 pandemic, Assistant EPA Administrator for Enforcement and Compliance Assurance Susan Parker Bodine has announced the exercise of enforcement discretion for certain environmental legal obligations. That memo, accessible at the link below, establishes specific conditions to be met, if you are unable to meet those obligations identified in your NPDES permit. <https://www.epa.gov/sites/production/files/2020-03/documents/oecamemoonccovid19implications.pdf>

As indicated in the Bodine memo, entities should make every effort to comply with their NPDES permits. However, if for reasons related to COVID-19, you are not able to timely submit any reports or plans required by your permit you should document the specific reasons for the delay and submit the report or plan as soon as possible. Thank you for indicating to me that you expect to be able to submit the plan by September 1, 2020.

Details related to NPDES Reporting in Response to the COVID-19 Pandemic can be found at: <https://netdmr.zendesk.com/hc/en-us/articles/360041746691-Covid-19-Information-Page>

Feel free to contact me or Jeff Kopf, Senior Enforcement Counsel, at (617) 918-1796 if you have questions on how this policy relates to your circumstances.

Thank you  
Doug

Douglas Koopman  
[Koopman.Douglas@epa.gov](mailto:Koopman.Douglas@epa.gov)  
EPA Region I  
5 Post Office Square, Suite 100  
Mail code 04-03  
Boston MA, 02109-3912



# LAKE TINDALL, LLP

ATTORNEYS AT LAW

127 SOUTH POPLAR  
P.O. Box 918  
GREENVILLE, MS 38702-0918  
(662) 378-2121  
FACSIMILE (662) 378-2183

FRANK S. THACKSTON, JR.  
CHARLES S. TINDALL, III  
ANDREW N. ALEXANDER, III  
SUSAN N. O'NEAL, M.D., F.A.A.P.  
APRIL D. ROBERTSON  
HEATH S. DOUGLAS  
SAMUEL G. MADDOX

OF COUNSEL:  
MARIAN S. ALEXANDER

WILLIAM T. WYNN  
1890-1959  
JEROME S. HAFER  
1895-1989  
J. ALBERT LAKE  
1905-1997  
CHARLES S. TINDALL, JR.  
1912-2008  
EDWIN W. TINDALL  
1949-2014

SENDER'S EMAIL:  
[aalexander@lindall.com](mailto:aalexander@lindall.com)

May 11, 2020

**VIA FEDERAL EXPRESS AND E-MAIL:**

Environmental Protection Agency  
Chief, Water Enforcement Branch  
Enforcement and Compliance Assurance Division  
Region 4  
Attention: Mr. Brad Ammons  
61 Forsyth Street, Southwest  
Atlanta, Georgia 30303  
E-Mail: [ammons.brad@epa.gov](mailto:ammons.brad@epa.gov)  
Telephone: (404) 562-9769

**VIA E-MAIL ONLY:**

Ms. Gretchen Zmitrovich  
Mississippi Department of Environmental Quality  
Post Office Box 2261  
Jackson, Mississippi 39225  
E-Mail: [gretchen\\_zmitrovich@mdeq.ms.gov](mailto:gretchen_zmitrovich@mdeq.ms.gov)

Re: *Information about Force Majeure Request*

Dear Brad and Gretchen:

Paragraph 41 of the Partial Consent Decree defines *force majeure* as follows:

“Force majeure,” for purposes of this Partial Consent Decree is defined as any event arising from causes beyond the control of the City, of any entity controlled by the City, or of the City’s Contractors, that delays or prevents the performance of any obligation under this Partial Consent Decree despite the City’s best efforts to fulfill the obligation. The requirement that the City exercised “best efforts to fulfill the obligation” includes using best efforts to anticipate any potential force majeure event and best efforts to address the effects of any such event (a) as it is occurring and (b) after it has occurred to prevent or minimize any resulting



delay to the greatest extent possible. Force majeure does not include the City's financial inability to perform any obligation under this Partial Consent Decree.

The City has reviewed the current state of the "deliverables" that are being performed by the City pursuant to the Partial Consent Decree, and believes that only two such deliverables have the current potential to present difficulties in the reasonably foreseeable future. Each of these deliverables will be discussed below. While neither may occur, but following the "better safe than sorry," adage the City believes that they should both be discussed at the present time. These two issues are (1) completion and final approval of the Group 2 Report and (2) the completion of the Hancock force main and lift station projects. Each of these issues are, at least potentially, subject to interference caused by the COVID-19 virus.

1. The Group 2 Report

The Group 2 Report covers, in general, the assessment of the Group 2 projects. It covers the assessment of SSES4 and 6. It contains an assessment of the "findings" involved in these projects and the associated rehabilitation cost. Group 2 covers approximately 56 miles of sewer line, 96 manholes and 30 pump stations. All of these assessments have been completed, virtually all being completed ahead of schedule or well ahead of schedule. The City expects to provide EPA, MDEQ and DOJ with a copy of this report, with all exhibits, on or before May 15, 2020. It is scheduled to be presented to the City Council at its May 19, 2020 meeting and, when attentively approved, to be presented to the public by publication of notice the next day in the Delta Democrat-Times. This notice period will last for a thirty (30) day period. Following this period, there is a fifteen (15) day period for public comment. The City Council will note any comments that it may receive during this period and take what it believes to be any necessary steps to consider and include what it believes to be meritorious suggestions.

Here lies the *potential* problem. Like most of the country, the City has been severely curtailed in its ability to hold "public meetings." The last three Council meetings, held over a period of six weeks, have been held via "Zoom" technology, with several Council Members and almost all Department Heads attending "virtually." Only ten (10) participants, or fewer, are psychically present in the Council Chambers. The City is, of course, aware that these limitations are presently in a state of flux, but there is no certainty that the present limitations will have disappeared by the time any "public meeting" is held. Given the forty-five (45) day period, (30 days for the public to review the report and fifteen (15) days for public comment) it is distinctly possible that any public meeting will still be prohibited by the Governor's Executive Order, thus causing the City to be unable to submit the Group 2 Report by its due date, July 4, 2020.



May 11, 2020

Accordingly, in accordance with the force majeure clause of the Partial Consent Decree, the City requests that this deadline for filing of the Group 2 Report be extended for a period (at present, unknown) that would enable it to hold a public meeting without violating any then-existing attendance restrictions.)

## 2. The Hancock Lift Station and Force Main Project

This project, an essential portion of the work currently being performed, is being performed by Murphy Pipeline Contractors, Inc., a company located in the states of Florida and Georgia. As was noted above, any businesses have been shut down by the COVID-19 virus by Governors' Orders. Many of these businesses have been construction companies. Florida and Georgia contractors, including Murphy Pipeline, were forbidden by their Governors' Orders to leave the state to perform work in other states. Murphy Pipeline was one of the contracting companies that were so forbidden, both in Florida and Georgia.

On March 20, 2020, Murphy Contractors contacted W.L. Burle Engineering, which has been serving from the beginning of this matter as the City's "local" engineering firm. On that date, Murphy Pipeline sent an email to Dr. Bill Burle, advising him of this situation, and requesting that the City issue a "stop-work" order to stop the time and work until the pandemic subsided enough that these orders could be rescinded by the Governors of those states. **See Exhibit "1."** The City agreed to do so, and the stop-work Order went into effect on April 7, 2020. **See Exhibit "2."** The crisis continued, and Murphy Pipeline once again requested an extension of the stop-work order. That request was placed on the Agenda for the City Council's May 8, 2020 meeting. However, shortly before that meeting, Murphy Pipeline learned that Florida's and Georgia's Governors had rescinded their Orders, and that it would be allowed to return to work in Greenville. Accordingly, the request for an extension of the stop-work order was removed from the Council Agenda.

The current potential problem is that the City is not currently aware how much time will be required for Murphy Pipeline to completely remobilize to Greenville and get back up to "speed" with the project. We expect to receive a new schedule from Murphy Pipeline in the next several days. The original completion deadline for the project is August 27, 2010. Currently, Murphy has lost approximately 1 ½ months with some unknown delay remaining for remobilization.

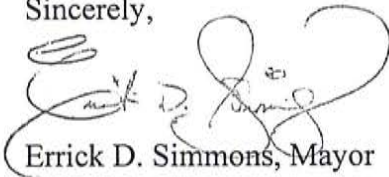
The City is requesting an extension of at least the number of days that Murphy Pipeline is unable to perform work on the contract because of the unavoidable work stoppage.

May 11, 2020

Dr. Burle has suggested that the contract deadline be extended until December 31, 2020, as an extension to that date would not cause any delays of other projects.

3. As was noted above, we don't know whether either of these issues will actually arise. However, because of the language quoted above from paragraph 41 of the Partial Consent Decree, the City felt compelled to bring these issues up for discussion. We will more than happy to address these issues, if necessary, in another conference call with any EPA, MDEQ or DOJ staff. We look forward to your response.

Sincerely,

A handwritten signature in black ink, appearing to read "Errick D. Simmons", is written over a printed name. The signature is stylized with a large, looping "S" and a distinct "E".

Errick D. Simmons, Mayor

EDS/ars



EXHIBIT

"1"

March 25, 2020

Mr. Taylor Morris, Secretary  
Murphy Pipeline Contractors, Inc.  
1876 Everlee Road  
Jacksonville, FL 32216

Re: Stop-Work Order No. 1  
Comprehensive Sanitary Sewer Improvements Project  
SRF-C280767-10  
Contract No. 1 – Hancock Force Main Improvements Project  
Greenville, Mississippi

Dear Mr. Morris:

W.L. Burle, Engineers, P.A. (BURLE) hereby acknowledges your email request made on March 20, 2020, to issue Stop Work Order No. 1 to Murphy Pipeline Contractors, Inc. (CONTRACTOR) for the referenced project. The Order was requested to stop the contract time and work until the pandemic has subsided such that personnel and equipment/material supply chains are not impacted.

The City of Greenville, Mississippi (OWNER) has approved Stop-Work Order No. 1 for the referenced Project until such time as the pandemic does not impact the project. Stop-Work Order No. 1 is effective as of April 7, 2020, and extends tentatively to May 1, 2020.

The issuance of this Stop-Work Order is at no additional cost to the OWNER. All mobilization and de-mobilization efforts related to this Stop-Work Order shall be the sole responsibility of the CONTRACTOR at no additional cost to the OWNER. All bid prices in the Bid Proposal and any unit prices added by previous change order(s) shall remain the same for all remaining work completed after the CONTRACTOR resumes work.

To be effective, this Order must be approved and signed by the OWNER and CONTRACTOR.

Requested by:  (Contractor) 3/25/20 (Date)

Accepted by:  (Owner) 04-07-20 (Date)

If you have any questions or concerns, please contact our office.

Sincerely,

W. L. BURLE, ENGINEERS, P.A.



William L. Burle, Jr., Ph.D., P.E.  
WLB/lcl

pc: Ms. Amelia D. Wicks, City Clerk, City of Greenville.  
Mr. Jermaine Thornton, Public Works Director  
Mr. Ronnie Washington, Utility Director  
Mr. Brent Jones, P.E., MDEQ



ORDER #20-215

ORDER: AUTHORIZING A STOP-WORK ORDER FOR MURPHY PIPELINE, CONTRACTOR FOR THE COMPREHENSIVE SANITARY SEWER IMPROVEMENT PROJECT - CONTRACT NO. 1 HANCOCK FORCE MAIN UNDER SRF LOAN #C-280767-10, DUE TO THE CORONAVIRUS (COVID-19) PANDEMIC.

On motion by Councilwoman Banks, seconded by Councilman Wilson with all members present voting AYE, Council authorized a stop-work order for Murphy Pipeline due to the coronavirus (COVID-19) pandemic.

Approved this 7th day of April, 2020

**Amelia D. Wicks, City Clerk**

Cc: City Clerk's Office  
Burle Engineers



## Melcher, John

---

**Subject:** FW: \*Date Change Notification\* Gulf Oil LP South Portland VRU Compliance & RATA Protocol (Air Emission License A-390-71-M-R (SM))

**Attachments:** Gulf South Portland\_Truck Loading Terminal VRU Compliance & RATA Protocol 2020\_Submitted.pdf

**Importance:** High

**From:** Fialkowski, Samantha <[SFialkowski@gulfoil.com](mailto:SFialkowski@gulfoil.com)>

**Sent:** Wednesday, May 06, 2020 10:42 AM

**To:** Perkins, Rick <[Rick.Perkins@maine.gov](mailto:Rick.Perkins@maine.gov)>; Hartley, Robert W <[Robert.W.Hartley@maine.gov](mailto:Robert.W.Hartley@maine.gov)>; Sansevero, Christine <[Sansevero.Christine@epa.gov](mailto:Sansevero.Christine@epa.gov)>; Rapp, Steve <[Rapp.Steve@epa.gov](mailto:Rapp.Steve@epa.gov)>; Osbahr, Bill <[osbahr.william@epa.gov](mailto:osbahr.william@epa.gov)>; Schwartz, Sandra <[Schwartz.Sandra@epa.gov](mailto:Schwartz.Sandra@epa.gov)>

**Cc:** Sullivan, Terry <[TSullivan@gulfoil.com](mailto:TSullivan@gulfoil.com)>; Gill, Christopher <[CGill@gulfoil.com](mailto:CGill@gulfoil.com)>; Levanduski, Timothy <[TLevanduski@gulfoil.com](mailto:TLevanduski@gulfoil.com)>; Carten, Steve <[scarten@gulfoil.com](mailto:scarten@gulfoil.com)>; Debbie Martin <[debbiem@paceenvironmental.com](mailto:debbiem@paceenvironmental.com)>; Erica Bolek <[erica@paceenvironmental.com](mailto:erica@paceenvironmental.com)>; John Donnelly <[john@paceenvironmental.com](mailto:john@paceenvironmental.com)>; Tom Brown <[tom@paceenvironmental.com](mailto:tom@paceenvironmental.com)>

**Subject:** \*Date Change Notification\* Gulf Oil LP South Portland VRU Compliance & RATA Protocol (Air Emission License A-390-71-M-R (SM))

**Importance:** High

Good Morning,

Please accept this notification update to all parties involved for a date change for the Compliance Emissions Testing and Relative Accuracy Test Audit for the Vapor Recovery Unit (VRU) installed at the Gulf Oil LP Truck Loading Gasoline Terminal located at 175 Front Street in South Portland, Maine. This new test date is as a result of testing limitations due to COVID-19 and will now take place on Thursday, May 28, 2020 and still be completed by PACE Environmental. Attached, is the testing protocol that was provided in the beginning of April by PACE Environmental and still serves as the appropriate protocol reference.

Please feel free to call or email me if you have any questions.



**Samantha Fialkowski** | Senior  
Environmental, Safety & Occupational  
Health Coordinator  
O: 339.933.7254  
C: 508.314.2562  
80 William Street, Suite 400, Wellesley Hills, MA 02481  
[gulfoil.com](http://gulfoil.com)

---

**From:** Debbie Martin <[debbiem@paceenvironmental.com](mailto:debbiem@paceenvironmental.com)>

**Sent:** Friday, April 3, 2020 4:34 PM

**To:** [Rick.Perkins@maine.gov](mailto:Rick.Perkins@maine.gov); [Robert.W.Hartley@maine.gov](mailto:Robert.W.Hartley@maine.gov); [osbahr.william@epa.gov](mailto:osbahr.william@epa.gov)

**Cc:** Fialkowski, Samantha <[SFialkowski@gulfoil.com](mailto:SFialkowski@gulfoil.com)>; Gill, Christopher <[CGill@gulfoil.com](mailto:CGill@gulfoil.com)>; Levanduski, Timothy <[TLevanduski@gulfoil.com](mailto:TLevanduski@gulfoil.com)>; Sullivan, Terry <[TSullivan@gulfoil.com](mailto:TSullivan@gulfoil.com)>; Carten, Steve <[scarten@gulfoil.com](mailto:scarten@gulfoil.com)>; [john@paceenvironmental.com](mailto:john@paceenvironmental.com); [tom@paceenvironmental.com](mailto:tom@paceenvironmental.com); Erica Bolek <[erica@paceenvironmental.com](mailto:erica@paceenvironmental.com)>; [debbiem@paceenvironmental.com](mailto:debbiem@paceenvironmental.com)

**Subject:** Gulf Oil LP South Portland VRU Compliance & RATA Protocol (Air Emission License A-390-71-M-R (SM))

PACE Environmental is submitting this protocol for the Compliance Emissions Testing and Relative Accuracy Test Audit on behalf of Gulf Oil LP, South Portland Terminal, South Portland, ME (Air Emission License A-390-71-M-R (SM) .

We have tentatively scheduled the test to be conducted on May 15, 2020 and we will confirm the test date with the Department once we receive protocol approval.

Due to our office closure, hard copies will be submitted at a later date once the office reopens.

If you have any questions or require additional information regarding the content of this protocol, please contact Erica Bolek at 610.262.3818 or by email at [erica@paceenvironmental.com](mailto:erica@paceenvironmental.com).

Best regards,  
Deb Martin  
PACE Environmental  
610.262.3818  
[debbiem@paceenvironmental.com](mailto:debbiem@paceenvironmental.com)



#### **Disclaimer**

The information contained in this communication from the sender is confidential. It is intended solely for use by the recipient and others authorized to receive it. If you are not the recipient, you are hereby notified that any disclosure, copying, distribution or taking action in relation to the contents of this information is strictly prohibited and may be unlawful.

**Melcher, John**

---

**Subject:** FW: RGP sampling question

---

**From:** Handler, Neil

**Sent:** Monday, April 13, 2020 8:47 AM

**To:** Yoder, Jarrod <[JYoder@haleyaldrich.com](mailto:JYoder@haleyaldrich.com)>

**Cc:** Little, Shauna <[Little.Shauna@epa.gov](mailto:Little.Shauna@epa.gov)>; Dart, Denny <[Dart.Denny@epa.gov](mailto:Dart.Denny@epa.gov)>; Kopf, Jeff <[Kopf.Jeff@epa.gov](mailto:Kopf.Jeff@epa.gov)>

**Subject:** RE: RGP sampling question

Jarrold,

I wanted provide you with a slight update on what was decided by EPA HQs for the NODI code for facilities to use to identify impacts related to the COVID-19 Pandemic. Please see the updated info below – please also feel free to contact me if you have any questions.

Thanks,

Neil Handler

Senior Enforcement Coordinator

EPA Region 1

5 Post Office Square, Suite 100 (OES04-4)

Boston, MA 02109-3912

(617) 918-1334

Fax (617) 918-0334

[handler.neil@epa.gov](mailto:handler.neil@epa.gov)

## **IMPORTANT – COVID-19 AND COMPLYING WITH YOUR NPDES PERMIT**

Facilities are expected to make every effort to comply with their NPDES permits. However, if for reasons related to COVID-19, you are able to obtain some but not all of your samples or analyze some but not all of your samples required by your permit, please submit your discharge monitoring reports (DMRs) through NetDMR by the due date with the information you have been able to obtain. Please also provide an explanation in either the comment section of the DMR or in a separate attachment describing how COVID-19 impacted your ability to take or analyze all of your required samples. **If you are not able to sample or analyze any of the samples required by your permit, please submit your DMRs through NetDMR by the due date using the No Data Indicator or NODI code of “Z” - “COVID-19”. When using the NODI code Z, a facility should provide an explanation in either the comment section of the DMR or in a separate attachment added to the DMR.** The Explanation should identify the specific reasons for the sampling/reporting delay and how COVID-19 was the cause of the noncompliance. Details related to NPDES Compliance and Reporting in Response to the COVID-19 Pandemic can be found at: <https://netdmr.zendesk.com/hc/en-us/articles/360041746691-Covid-19-Information-Page>.

---

**From:** Handler, Neil

**Sent:** Thursday, March 19, 2020 11:23 AM

**To:** Yoder, Jarrod <[JYoder@haleyaldrich.com](mailto:JYoder@haleyaldrich.com)>

**Cc:** Little, Shauna <[Little.Shauna@epa.gov](mailto:Little.Shauna@epa.gov)>; Dart, Denny <[Dart.Denny@epa.gov](mailto:Dart.Denny@epa.gov)>; Kopf, Jeff <[Kopf.Jeff@epa.gov](mailto:Kopf.Jeff@epa.gov)>

**Subject:** RE: RGP sampling question

Hi Jarrod,

Thank you for your email below and for bringing the issue as well as your concerns to our attention. EPA Region 1 is currently working with our counterparts at EPA HQs to come up with an appropriate way for you (as well as other facilities that are similarly effected across the United States) to meet and comply your NPDES reporting and monitoring requirements over the next several months. We have been told that EPA HQs staff are meeting today and tomorrow to discuss this topic so we hope to be able to get back to you in the very near future with a response.

Thanks,

Neil Handler

Senior Enforcement Coordinator

EPA Region 1

5 Post Office Square, Suite 100 (OES04-4)

Boston, MA 02109-3912

(617) 918-1334

Fax (617) 918-0334

[handler.neil@epa.gov](mailto:handler.neil@epa.gov)

---

**From:** Yoder, Jarrod <[JYoder@haleyaldrich.com](mailto:JYoder@haleyaldrich.com)>

**Sent:** Thursday, March 19, 2020 10:56 AM

**To:** Little, Shauna <[Little.Shauna@epa.gov](mailto:Little.Shauna@epa.gov)>

**Cc:** Handler, Neil <[Handler.Neil@epa.gov](mailto:Handler.Neil@epa.gov)>

**Subject:** RE: RGP sampling question

Thanks Shauna!

Hi Neil, we are being bombarded with questions regarding the sampling requirements for active RGP sites. Will EPA temporarily suspend the need for sampling since the construction sites have been shutdown? I recognize that is only 1 kind of and that some other systems but we were hoping to give some guidance to our clients.

Thanks!

Jarrod

---

**From:** Little, Shauna <[Little.Shauna@epa.gov](mailto:Little.Shauna@epa.gov)>  
**Sent:** Thursday, March 19, 2020 10:43 AM  
**To:** Yoder, Jarrod <[JYoder@haleyaldrich.com](mailto:JYoder@haleyaldrich.com)>  
**Cc:** Handler, Neil <[Handler.Neil@epa.gov](mailto:Handler.Neil@epa.gov)>  
**Subject:** RE: RGP sampling question

**CAUTION: External Email**

---

Hi Jarrod,

Thank you for reaching out with this question. The person in our compliance group for the RGP is Neil Handler. He can provide guidance on this question. I've copied him on this response.

For new RGPs, you can provide a change for start and end dates using a Notice of Change. It will not change the effective date (which is the date the authorization letter is issued) or expiration date (which is the expiration date of the RGP in 2022).

Regards,

Shauna Little  
Physical Scientist  
Water Division  
U.S. EPA Region I  
Phone: (617) 918-1989

---

**From:** Yoder, Jarrod <[JYoder@haleyaldrich.com](mailto:JYoder@haleyaldrich.com)>  
**Sent:** Thursday, March 19, 2020 10:36 AM  
**To:** Little, Shauna <[Little.Shauna@epa.gov](mailto:Little.Shauna@epa.gov)>  
**Subject:** RGP sampling question

Hi Shauna,

We have a bunch of construction sites shutting down and suspending dewatering equipment where no discharges will occur during this shutdown because of COVID-19. Some of our clients are wondering if there will be a temporary suspension of sampling requirements or if they need to provide notification to EPA. Has EPA setup a procedure to manage this or how they want to be notified?

Also, with any new RGP, like the one I sent yesterday, is there a way to provide you with notification of start date since we are uncertain when we will be allowed to start construction?

Thanks!

Jarrod

## Melcher, John

---

**Subject:** FW: EPA CMOM Order to Hull  
**Attachments:** 2020 Hull CMOM Annual Report Extension Approval Ltr 3\_19\_20.pdf

---

**From:** Struzziery, John <[JStruzziery@town.hull.ma.us](mailto:JStruzziery@town.hull.ma.us)>  
**Sent:** Tuesday, March 17, 2020 3:12 PM  
**To:** Turin, David <[Turin.David@epa.gov](mailto:Turin.David@epa.gov)>  
**Cc:** Frank Cavaleri <[fcavaleri@woodardcurran.com](mailto:fcavaleri@woodardcurran.com)>; Burns, David (DEP) <[david.burns@state.ma.us](mailto:david.burns@state.ma.us)>; Robert Scott <[rscott@woodardcurran.com](mailto:rscott@woodardcurran.com)>; Kiely, Brian <[bkiely@town.hull.ma.us](mailto:bkiely@town.hull.ma.us)>; O'Connor, Carol <[coconnor@town.hull.ma.us](mailto:coconnor@town.hull.ma.us)>  
**Subject:** RE: EPA CMOM Order to Hull

Hi David, We are working on compiling the 2019 CMOM program manual and related documents as indicated. In light of the Corvid19 outbreak and impact on our work activities such as remote work, limited access to files, and limited interaction with staff, we request an extension of the reporting deadline from March 31<sup>st</sup> to May 29<sup>th</sup>. If we can submit sooner, we certainly will do so.

Thank you for your consideration.

John

John J. Struzziery, P.E.  
Director of Wastewater Operations/Assistant Director of Public Works  
Wastewater Treatment Facility  
1111 Nantasket Avenue  
Hull, MA 02045  
(O) 781-925-1207  
(M) 781-738-7853



---

**From:** Turin, David <[Turin.David@epa.gov](mailto:Turin.David@epa.gov)>  
**Sent:** Thursday, February 27, 2020 12:25 PM  
**To:** Struzziery, John <[JStruzziery@town.hull.ma.us](mailto:JStruzziery@town.hull.ma.us)>  
**Cc:** Frank Cavaleri <[fcavaleri@woodardcurran.com](mailto:fcavaleri@woodardcurran.com)>; Burns, David (DEP) <[david.burns@state.ma.us](mailto:david.burns@state.ma.us)>  
**Subject:** EPA CMOM Order to Hull

Hi John,

In response to a question from Frank Cavaleri, I am writing to remind you that EPA's CMOM order (Docket No. CWA-AO-R01-FY16-09) is still in effect and Hull must continue to comply with its requirements, including keeping its CMOM program manual updated, implementing necessary corrective actions, and submitting annual reports until notified by the EPA that it is no longer required to do so.

Feel free to call me, if you have any questions.

Thanks, Dave

---

David Turin  
U.S. Environmental Protection Agency  
Water Compliance Section - Mail code: 04-3  
Enforcement and Compliance Assurance Division  
5 Post Office Square - Suite 100  
Boston MA 02109 - 3912

Tel. (617) 918-1598 :: Fax (617) 918-0598  
[turin.david@epa.gov](mailto:turin.david@epa.gov)

---

This email has been scanned for spam and viruses by Proofpoint Essentials. Click [here](#) to report this email as spam.





**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**

REGION 1  
5 POST OFFICE SQUARE, SUITE 100  
BOSTON, MA 02109-3912

SENT VIA ELECTRONIC MAIL – DELIVERY RECEIPT REQUESTED

March 19, 2020

John J. Struzziery, P.E.  
Director of Wastewater Operations/Assistant Director of Public Works  
Wastewater Treatment Facility  
1111 Nantasket Avenue  
Hull, MA 02045

Subject: Extension Request pursuant to EPA Administrative Order on Consent  
Docket No. CWA-AO-R01-FY16-09

Dear Mr. Struzziery:

Thank you for your email of March 17, 2020 regarding the requirement for submission of an annual report in accordance with IV. 7 of the above-referenced Order on Consent.

With this letter, EPA is granting your request for an extension for submission of the Annual report originally due on March 31, 2020 until May 29, 2020 because of delays associated with the Town's response to Covid-19.

Please contact David Turin at (617) 918-1598 or [turin.david@epa.gov](mailto:turin.david@epa.gov) if you have questions or need additional information.

Sincerely,

**DENNY DART**  
Digitally signed by DENNY  
DART  
Date: 2020.03.19 12:35:35  
-04'00'

Denny Dart, Chief  
Water Compliance Section

CC (Via Email):

Frank Cavaleri <[fcavaleri@woodardcurran.com](mailto:fcavaleri@woodardcurran.com)>;  
Robert Scott <[rscott@woodardcurran.com](mailto:rscott@woodardcurran.com)>;  
Brian Kiely <[bkiely@town.hull.ma.us](mailto:bkiely@town.hull.ma.us)>;  
Carol O'Connor <[coconnor@town.hull.ma.us](mailto:coconnor@town.hull.ma.us)>  
David Burns (DEP) <[david.burns@state.ma.us](mailto:david.burns@state.ma.us)>  
David Turin (EPA) <[turin.david@epa.gov](mailto:turin.david@epa.gov)>  
Jeff Kopf (EPA) <[kopf.Jeff@epa.gov](mailto:kopf.Jeff@epa.gov)>

## Bhatt, Krishna

---

**From:** Robert A Simpson <ra.simpson@hyattball.com>  
**Sent:** Thursday, April 30, 2020 4:25 PM  
**To:** Hayden, Melva  
**Cc:** Bryan Sherman; Roufaeal, Alia; McKenna, Douglas; Feinmark, Phyllis  
**Subject:** RE: Hyatt Ball Penalty Payment Late

Ms. Hayden,

I just called your alternate work # and office # both listed on your auto signature below and left messages at both locations. To keep things moving forward here is the payment plan that I am proposing. Please let me know if this is acceptable.

18 monthly payments of \$183.33 starting on May 15, 2020 (can start on May 1<sup>st</sup> if that is preferable.) Payments will be made until the \$3,300.00 is paid in full. Hyatt can make payments by check, debit card or by ACH directly into an account.

Regards,

Rob

---

**From:** Hayden, Melva [mailto:Hayden.Melva@epa.gov]  
**Sent:** Thursday, April 30, 2020 10:58 AM  
**To:** Robert A Simpson  
**Cc:** Bryan Sherman; Roufaeal, Alia; McKenna, Douglas; Feinmark, Phyllis  
**Subject:** RE: Hyatt Ball Penalty Payment Late

Dear Mr. Simpson,

This is to acknowledge and respond to your email communication sent on yesterday at 8:40 p.m. While EPA would like to assist you during this unprecedented health crisis which has impacted many small businesses financially, it is difficult to gauge your company's financial hardship due to the coronavirus without having a conversation with you as to how much you anticipate the company can afford to pay towards the \$3,300 penalty over what amount of time? As I previously mentioned, I am not on duty at the times you send email communications to me at my EPA email address or on my EPA voicemail. Please let me know what time you will be available during the day between 8:30 AM and 6:00 PM when we might be able to talk. I will be happy to give you a call at that time. I look forward to speaking with you and working with you. Please stay safe and be well.

Sincerely,

Melva J. Hayden

---

**From:** Robert A Simpson <ra.simpson@hyattball.com>  
**Sent:** Wednesday, April 29, 2020 8:40 PM  
**To:** Hayden, Melva <Hayden.Melva@epa.gov>  
**Subject:** Re: Hyatt Ball Penalty Payment Late

Ms. Hayden,

Sorry I was unable to reach out to you today. I will ensure to reach out to you tomorrow.

Regards,

Rob

-----  
Sent from iPhone

**Robert A. Simpson**  
**President**

**Hyatt Ball Company LTD**  
**Office:** [518-747-0272](tel:518-747-0272)  
**Fax:** [518-747-2619](tel:518-747-2619)  
[r.simpson@hyattball.com](mailto:r.simpson@hyattball.com)

***Hyatt Ball Company – A Plastics Industry Leader for Over 100 Years.***

---

This email message (including attachments) may contain proprietary, privileged and or confidential information of Hyatt Ball Co. LTD. and is intended solely to whom it is addressed. Any use of this email not expressly authorized by Hyatt Ball Co. LTD. including dissemination, review or other use of or the taking of any action in reliance upon this email is prohibited. If you are not the intended recipient please notify the sender by return e-mail immediately and permanently delete the message in its entirety including all copies and attachments.

On Apr 28, 2020, at 8:47 PM, Robert A Simpson <[ra.simpson@hyattball.com](mailto:ra.simpson@hyattball.com)> wrote:

Hello Ms. Hayden,

Thank you for returning my email and phone message. I was at work today but not in my office most of the day so I just listened to your voice mail. My apologies when I called last Friday at 10:00PM. I knew I was not going to be able to reach you but I wanted to make sure I got back to you the same day you reached out to me and that was around the time my work day allowed me to read my emails so I called and emailed right after reading your email. I am extremely appreciative that the EPA will consider allowing Hyatt Ball to work out a schedule to pay the penalty. I will reach out to you tomorrow to discuss what possible options may be allowed to Hyatt. Thank you for your time and consideration.

Regards,

Rob

---

**From:** Hayden, Melva [<mailto:Hayden.Melva@epa.gov>]  
**Sent:** Tuesday, April 28, 2020 9:49 AM  
**To:** Robert A Simpson  
**Cc:** Bryan Sherman; Roufaeal, Alia; McKenna, Douglas; Feinmark, Phyllis  
**Subject:** RE: Hyatt Ball Penalty Payment Late

Good morning Messrs. Simpson and Sherman, et al

Thank you for responding to both Mr. McKenna's and my email communications. I am sorry I missed your call. However, you called me at 10:00 PM on Friday, April 24, 2020. I am not on duty at that time. Thank you also for leaving a message. If you wish to speak with me, I am usually available from 8:30 AM until 6:00 PM.

In the spirit of Mr. McKenna's email and the Agency's concern about the impact that the Covid-19 pandemic is having and has had on businesses in our nation, I will discuss with Ms. Roufaeal your request to pay the penalty in installments. I will get back to you shortly. I am certain that we will be able to work out a schedule for you (Hyatt Ball) to pay the penalty. Thank you again. We wish you and your business well. Please stay safe and be well.

Sincerely,

Melva J. Hayden

---

**From:** Robert A Simpson <[ra.simpson@hyattball.com](mailto:ra.simpson@hyattball.com)>

**Sent:** Friday, April 24, 2020 10:15 PM

**To:** Hayden, Melva <[Hayden.Melva@epa.gov](mailto:Hayden.Melva@epa.gov)>

**Subject:** RE: Hyatt Ball Penalty Payment Late

Ms. Hayden,

I copied you on my other reply email to Mr. McKenna and I also called you and left a message at the phone number you listed in your email below. Given the financial and operational challenges we are currently experiencing I wanted to discuss with you if there are any payment plan options available to us at this time. I will make myself available at any time that is convenient for you to discuss over the phone or through email, whatever works the best for you. Thanks you.

Regards,

Rob

---

**From:** Hayden, Melva [<mailto:Hayden.Melva@epa.gov>]

**Sent:** Friday, April 24, 2020 1:38 PM

**To:** Robert A Simpson

**Cc:** Bryan Sherman; Roufaeal, Alia; McKenna, Douglas; Feinmark, Phyllis

**Subject:** Hyatt Ball Penalty Payment Late

Dear Messrs. Simpson and Sherman,

I hope that you are all well and safe. My program clients have informed me that Hyatt Ball has not submitted its \$3,300 penalty payment within the 45 calendar days after the effective date of the Consent Agreement (i.e., the date it is filed with the Regional Hearing Clerk) provided under the terms of the Consent Agreement and Final Order (CA/FO). The CA/FO was filed with the Regional Hearing Clerk on February 26, 2020. Therefore, the penalty payment was due 45 calendar day from February 26, 2020, pursuant to par. 8 on pg. 4 of the CAFO, on April 11, 2020. However since the due date fell on a Saturday, then on Monday, April 13, 2020. Please pay the \$3,300 penalty payment immediately to avoid any further collection action. Should you need to discuss this matter in further detail, please contact me directly at 212.637.3230, or speak with Alia Roufaeal at 212.637.3864. Thank you.

Sincerely,

**Melva J. Hayden**

Melva J. Hayden, Esq.  
Assistant Regional Counsel  
Region 2 Title VI Coordinator  
Office of Regional Counsel  
U.S. EPA - Region 2  
290 Broadway - 16th Floor  
New York, NY 10007-1866  
212-637-3230 (EPA Office)  
212-637-3202 (EPA Fax)  
718-712-5674 (Alternate Work Location Number)

## Bhatt, Krishna

---

**From:** Hayden, Melva  
**Sent:** Monday, May 4, 2020 3:49 PM  
**To:** Robert A Simpson  
**Cc:** Bryan Sherman; Roufaeal, Alia; McKenna, Douglas; Feinmark, Phyllis; Wise, Milton  
**Subject:** I/M/O Hyatt Ball Co., Ltd. Docket No. CWA-02-2020-3304 Summary of Deliverables Agreed to on May 4, 2020 Conference Call  
**Attachments:** CWA-02-2020-3005\_Hyatt Ball Response to Extention 3-20-20.Ltr.pdf; CWA-02-2020-3304 Payment agreement.5-1-20.pdf

Dear Mr. Simpson, et al

Thank you for a productive conference call with Ms. Roufaeal and myself. As we discussed and agreed, EPA has agreed to allow Hyatt Ball Co., Ltd. to pay the \$3,300 penalty payment agreed to under the terms of the Consent Agreement and Final Order (CA/FO) in monthly installments of \$183.33 each over a period of eighteen (18) months. Under the terms of the attached EPA Cincinnati Financial Center (CFC), the first payment is due and owing on 06/06/20. The final payment is due and owing on 11/01/2021 in the amount of \$183.39. Once you have signed and entered into the Payment Plan Agreement, this matter will be handled by Mr. Milton Wise in our CFC office. As we also discussed and agreed Hyatt Ball will address and comply with all of the below outstanding deliverables from the Administrative Order, the CA/FO issued in this matter, and those discussed in today's conference call.

### Deliverables from Hyatt Ball:

1. Hyatt Ball agreed that it will submit the Zinc Compliance Certification, or advise EPA that it is not ready to certify to the Zinc Compliance and why (See the attached April 6, 2020 Letter from Mr. McKenna to Mr. Simpson)
2. Hyatt Ball agreed that its overdue Reports for December 2018, June 2019, and December 2019 are to be submitted on or before the July 20, 2020 extension date.
3. Hyatt Ball agreed regarding Sampling Collections that Hyatt Ball will inform EPA in writing if it has not conducted any sampling, and why not; or if so, submit the results to EPA.
4. Hyatt Ball agreed that it will advise EPA in writing if the June 30, 2020 Report will be delayed. If it will be delayed, Hyatt Ball agreed that it will request another extension because the June 30, 2020 report was not included in the July 20, 2020 extension.
5. Hyatt Ball agreed that it will, as required by EPA, submit a letter and include the Certification Statement specifying the financial hardship the company has suffered due the Covid-19 pandemic. (See the required Certification Statement language below).

Certification Statement language: *"I certify under penalty of law that I have examined and am familiar with the information submitted in this document and all attachments and that, based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the information is true, accurate, and complete. I am aware that there are significant potential penalties for submitting false information, including the possibility of fines and imprisonment."*

6. Hyatt has agreed and understands that it must sign, date and return the Hyatt Ball Payment Plan Agreement (Hyatt Ball PPA) to Milton Wise, via email at [wise.milton@epa.gov](mailto:wise.milton@epa.gov) with email copy to Melva J. Hayden at [hayden.melva@epa.gov](mailto:hayden.melva@epa.gov) and Alia Roufaeal at [roufaeal.alia@epa.gov](mailto:roufaeal.alia@epa.gov). Original signed and dated Hyatt Ball PPA should be mailed to Milton Wise at the address provided in the Agreement.
7. EPA has agreed to provide you with the required language that must be contained in the Certification Statement. (Completed. See above language).

8. EPA has agreed to provide you with the Hyatt Ball PPA for your review and signature (Completed. See the attached Hyatt Ball PPA).

Should you have questions or require clarification on any of the above mentioned deliverables, please do not hesitate to call either me at (212) 637-3230, or Ms. Roufaeal at (212) 637-3864. Again, I wish to thank you for a productive conference call meeting. We look forward to your continued cooperation to bring this matter to a final resolution. It is EPA's hope that Hyatt Ball and other impacted businesses will recover once this pandemic health crisis is past. Please stay safe and be well.

Sincerely,

Melva J. Hayden

Melva J. Hayden, Esq.  
Assistant Regional Counsel  
Region 2 Title VI Coordinator  
Office of Regional Counsel  
U.S. EPA - Region 2  
290 Broadway - 16th Floor  
New York, NY 10007-1866  
212-637-3230 (EPA Office)  
212-637-3202 (EPA Fax)  
718-712-5674 (Alternate Work Location Number)

**Melcher, John**

---

**Subject:** FW: NPDES Annual Reports-Extension Request

---

**From:** [rkorber@kvpllc.com](mailto:rkorber@kvpllc.com) <[rkorber@kvpllc.com](mailto:rkorber@kvpllc.com)>  
**Sent:** Friday, March 27, 2020 10:29 AM  
**To:** Koopman, Douglas <[koopman.douglas@epa.gov](mailto:koopman.douglas@epa.gov)>  
**Cc:** [teresa.ptak@des.nh.gov](mailto:teresa.ptak@des.nh.gov); Pastrana-Del Valle, Solanch <[pastrana-del-valle.solanch@epa.gov](mailto:pastrana-del-valle.solanch@epa.gov)>  
**Subject:** NPDES Annual Reports-Extension Request

Doug –

As discussed, due to the current situation regarding Coronavirus, we hereby request a 60 day extension on the submittal of annual reports under the respective NPDES Permits for the Bay District (Center Harbor & Moultonborough NH), Town of Littleton, NH and Town of Lincoln, NH. We will assume the extension has been granted unless we hear otherwise.

Please call with any questions.

Regards, Ray

Ray Korber, PE, MSCE

**KV Partners LLC**  
CONSULTING ENGINEERS

PO Box 7721, Gilford, NH 03249  
Tel: 603-513-1909 | Cel: 603-491-3136 | Fax: 866-587-0507  
Email: [rkorber@kvpllc.com](mailto:rkorber@kvpllc.com)

*Partners in Building Better Communities*



**Melcher, John**

---

**From:** Koopman, Douglas  
**Sent:** Thursday, April 02, 2020 3:40 PM  
**To:** rkorber@kvpllc.com  
**Cc:** teresa.ptak@des.nh.gov; Pastrana-Del Valle, Solanch  
**Subject:** Response to your request for reporting extension

Dear Ray

Thank for your email requesting guidance with respect to submitting reports under the NPDES permits for the Bay District, Littleton and Lincoln NH.

In response to noncompliance related to the COVID-19 pandemic, Assistant EPA Administrator for Enforcement and Compliance Assurance Susan Parker Bodine has announced the exercise of enforcement discretion for certain environmental legal obligations. That memo, accessible at the link below, establishes specific conditions to be met, if an entity is unable to meet its obligations identified in its NPDES permit.

<https://www.epa.gov/sites/production/files/2020-03/documents/oecamemooncovid19implications.pdf>

As indicated in the Bodine memo, entities should make every effort to comply with their NPDES permits. However, if for reasons related to COVID-19, they are not able to timely submit any reports required by a permit they should document the specific reasons for the delay and submit the report as soon as possible. Thank you for indicating to me that you expect to be able to submit the reports within the next 60 days.

Details related to NPDES Reporting in Response to the COVID-19 Pandemic can be found at:  
<https://netdmr.zendesk.com/hc/en-us/articles/360041746691-Covid-19-Information-Page>

Feel free to contact me or Jeff Kopf, Senior Enforcement Counsel at (617) 918-1796 if you have questions on how this policy relates to your circumstances.

Thank you

Doug

Douglas Koopman  
(617)918-1747  
[Koopman.Douglas@epa.gov](mailto:Koopman.Douglas@epa.gov)  
EPA Region I  
5 Post Office Square, Suite 100  
Mail code 04-03  
Boston MA, 02109-3912



April 6, 2020

Chief, Environmental Enforcement Section  
Environment and Natural Resources Division  
U.S. Department of Justice  
Box 7611 Ben Franklin Station  
Washington, D.C. 20044-7611  
Re: DOJ No. 90-5-1-1-08858

Chief  
Water Programs Enforcement Branch  
Environmental Protection Agency Region 4  
61 Forsyth Street SW  
Atlanta, Georgia 30303

RE: Civil Action No. 5:06-cv-386  
Lexington-Fayette Urban County Government – Kentucky  
KPDES Permit Nos.: KY0021491 / KY0021504 / KYS000002  
Submission Deadline Extension Request: 2020 1<sup>st</sup> Quarterly Report

Dear Sir / Madam:

Due to the workplace challenges presented by the ongoing COVID-19 pandemic, the Lexington-Fayette Urban County Government (LFUCG) is requesting approval to change the 2020 1<sup>st</sup> Quarter (2020 Q1) report deadline from April 30 2020 to May 31, 2020.

Paragraph 29.A of the above referenced civil action requires submission of quarterly reports no later than 30 days after completion of each succeeding quarter, which in turn would require submission of the 2020 Q1 report by April 30, 2020. On March 25, 2020, the Governor of Kentucky via Executive Order declared a State of Emergency and ordered all non-life sustaining businesses to cease operations. LFUCG in conjunction with our Consent Decree Program Management consultants, are following that order by reducing “report to work” staff and implementing “work from home” strategies. While this has been effective in controlling the spread of the virus and maintaining some levels of productivity, overall productivity in several key areas has been compromised.



The content of the 2020 Q1 report will be unchanged. This request is limited to extending the deadline by 31 days so that the individuals responsible for compiling, reviewing and presenting the required information have sufficient time to ensure submission of a complete and accurate report, consistent with prior work products submitted by LFUCG.

If you have any questions, please contact me at (859) 425-2455.

Sincerely,

**Charles H. Martin**

Charles H. Martin, P.E., Director  
Division of Water Quality

Hardcopy PC:

Michael Kroeger, Director, Division of Enforcement, Department of Environmental Protection  
300 Sower Boulevard Frankfort, KY 40601

Susan Speckert, LFUCG Commissioner of Law  
Nancy Albright, P.E., LFUCG Commissioner of Environmental Quality and Public Works

Email Copies:

Laurie Jones, Environmental Engineer, Water Protection Division, Region 4 EPA  
Jill Bertelson, P.E., Division of Water, Department of Environmental Protection  
Michael Cravens, Attorney, Department of Law  
Jennifer Carey, P.E., Division of Water Quality  
Julie Mantrom, Division of Water Quality





## *Legal Counsel.*

DINSMORE & SHOHL LLP  
City Center, 100 W. Main St., Suite 900  
Lexington, KY 40507  
[www.dinsmore.com](http://www.dinsmore.com)

Carolyn M. Brown  
(859) 425-1092 (direct) · (859) 425-1099 (fax)  
[carolyn.brown@dinsmore.com](mailto:carolyn.brown@dinsmore.com)

April 29, 2020

**VIA OVERNIGHT MAIL**

Chief, Environmental Enforcement Section  
Environment and Natural Resources Division  
U.S. Department of Justice  
Box 7611 Ben Franklin Station  
Washington, D.C. 20044-7611  
DOJ# 90-5-1-1-08858

Chief  
Water Programs Enforcement Branch  
Environmental Protection Agency Region 4  
61 Forsyth Street, S.W.  
Atlanta, Georgia 30303

Office of Water Legal Support  
Office of Regional Counsel  
Environmental Protection Agency Region 4  
61 Forsyth Street, S.W.  
Atlanta, Georgia 30303

Director of the Division of Enforcement  
Department for Environmental Protection  
300 Sower Boulevard  
Frankfort, KY 40601

**Re: Lexington-Fayette County Urban Government (LFUCG) Consent Decree  
Entered in Civil Action No. 5:06-cv-386  
Force Majeure Notification for COVID-19 Pandemic**

Dear Sir or Madam:

As counsel for the Lexington-Fayette Urban County Government (LFUCG) and pursuant to Paragraph 55 (Section XII) of the Consent Decree in the above-referenced case, our firm submits this notification of a Force Majeure event on behalf of LFUCG concerning the ongoing COVID-19 pandemic. As you know, the COVID-19 pandemic has had a widespread adverse impact on the

April 29, 2020

ability of governments and businesses to operate. On March 25, 2020, Kentucky Governor Andy Beshear issued an Executive Order declaring a state of emergency and ordering all non-life sustaining businesses to cease operations. The Order specifies that “[a]ll in-person government activities at the state, county, and local level that are not necessary to sustain or protect life, or to support Life-Sustaining businesses, are suspended.” Further: “For purposes of this Order, necessary government activities include activities performed by critical infrastructure workers, including workers in law enforcement, public safety, and first responders. Such activities also include, but are not limited to, public transit, trash pick-up and disposal, activities necessary to manage and oversee elections, operations necessary to enable transactions that support the work of a business’s or operation’s critical infrastructure workers, and the maintenance of safe and sanitary public parks so as to allow for outdoor recreation.”

In accordance with this Order, LFUCG has enacted a Healthy at Home plan that encourages the majority of its employees to work at home, including those LFUCG employees who would typically be involved with work performed under the Consent Decree. LFUCG has determined that this work is “not necessary to sustain or protect life” under the Governor’s Order. The only LFUCG offices that remain open are those that “focus on services that protect and sustain life.” LFUCG’s consultants who perform work under the Consent Decree have also been complying with this Executive Order by reducing “report to work” staff and implementing “work from home” strategies. As a result, LFUCG has been unable to reliably have staff and contractors available to work with respect to LFUCG’s obligations under the Consent Decree.

As you know, LFUCG has worked diligently to meet all Consent Decree deadlines in a timely manner. LFUCG will continue to exercise its best efforts to meet deadlines and to the extent possible, to minimize delays despite the COVID-19 interruptions. While LFUCG does not believe it has missed any requirement or deadline under the Consent Decree, the work place disruption caused by COVID-19 has placed LFUCG at risk in ensuring the quantity and quality of Consent Decree work that has occurred during the current State of Emergency. As such, LFUCG is submitting this formal notice of the occurrence of an event of force majeure under the Consent Decree that covers all future requirements and deadlines that it believes could be impacted by COVID-19.

Due to events beyond the control of LFUCG, specifically the unanticipated, widespread impact of COVID-19 and government restrictions resulting therefrom, LFUCG will likely be prevented from performing certain requirements under the Consent Decree. Attached as Exhibit A is a list of requirements and deadlines that LFUCG believes could be potentially impacted. Additionally, LFUCG anticipates it will lack sufficient staff to perform inspections required by the Consent Decree and LFUCG’s Kentucky Pollutant Discharge Elimination System Permit to Discharge from a Large Municipal Separate Storm Sewer System, Permit No. KYS000002 (MS4 Permit). The pandemic and the resulting governmental restrictions are beyond the control of LFUCG.<sup>1</sup> These restrictions are not related in any way to a financial inability of LFUCG to

---

<sup>1</sup> The Environmental Protection Agency (EPA) recognizes “potential worker shortages due to the COVID-19 pandemic as well as the travel and social distancing restrictions imposed by both governments and corporations or recommended by the Centers of Disease Control and Prevention to limit the spread of COVID-19.” EPA further recognizes that “[t]hese consequences may affect reporting obligations and milestones set forth in settlements and consent decrees.” See March 26, 2020, EPA COVID-19 Implications for EPA’s Enforcement and Compliance Assurance Program.

April 29, 2020

complete its work under the Consent Decree. Further, LFUCG does not anticipate that any potential missed inspection or capital project deadline will result in any risk or imminent threat to human health or the environment.

LFUCG is concerned that it will not have sufficient staffing to perform inspections required by the Consent Decree and LFUCG's MS4 Permit. Various inspections are required monthly, quarterly, semi-annually, and per event. LFUCG will attempt to satisfy all inspection requirements under the Consent Decree and MS4 Permit. However, to the extent that LFUCG is unable to perform required inspections because of COVID-19 restrictions, LFUCG requests that it not be penalized in any way for a failure to perform such inspections through June 30, 2020. LFUCG reserves the right to update the timeframe covered by this request based on the unknown duration of the COVID-19 pandemic and government restrictions.

LFUCG is also concerned that the COVID-19 staffing restrictions will cause delays for certain hard deadlines under the Consent Decree and MS4 Permit. LFUCG is concerned it will not be able to complete production of the stormwater best management practices video required by Table 5, PC-8 of the MS4 Permit. LFUCG is also concerned it will not be able to meet the December 31, 2020 deadline for several capital projects required by the Consent Decree because easement acquisition efforts have had to cease as a result of stay-at-home work requirements and court closures. These projects include: WR4 and WR5: Wolf Run D&E Trunk Sewer; WH-9: Southeastern Hills Trunk Sewer; CR-14: New Circle Trunk A; NE-3: Liberty Road Trunk; EH-5: Overbrook PS; and CR-10: Upper Cane Rune WWS. LFUCG is also affected by a contractor staffing shortage related to the WR2 and WR3: Wolf Run B&C Trunk Sewer. Due to these concerns, LFUCG requests that it be granted a six-month extension for any and all deliverable deadlines, including all reporting requirement deadlines, occurring on or before December 31, 2020. LFUCG reserves the right to request a further extension based on the unknown duration of the COVID-19 pandemic and government restrictions.

Finally, pursuant to my conversations on April 21 and April 28, 2020 with Mr. Paul Schwartz, Associate Regional Counsel for EPA Region 4, the April 6, 2020 letter from Mr. Charles Martin, LFUCG, to Ms. Laurie Jones at EPA and Mr. Michael Kroeger at the Kentucky Energy and Environment Cabinet, requesting an extension of the 2020 1st Quarter Report deadline is being treated as a force majeure request by the agency and will be granted although LFUCG has not yet received a formal response to that effect. Based on those commitments, you may consider the April 6 notice and request for relief as excluded from this force majeure notification.

At this point in time, it is not possible to predict the duration of the current event of force majeure. However, LFUCG has been and will continue to monitor events relating to the COVID-19 pandemic and government actions relating thereto so that it may fully perform its obligations under the Consent Decree as soon as it is able to do so. If you have any questions or would like any additional information, please feel free to contact me at [carolyn.brown@dinsmore.com](mailto:carolyn.brown@dinsmore.com) or my colleague Anna Claire Skinner at [anna.skinner@dinsmore.com](mailto:anna.skinner@dinsmore.com).

April 29, 2020

Sincerely yours,

A handwritten signature in black ink, appearing to read 'CMB', followed by a long horizontal flourish.

Carolyn M. Brown

CMB:ah  
Enclosure

cc:     *via electronic mail*  
Anna Claire Skinner, Dinsmore & Shohl LLP  
Charles Martin, LFUCG  
David Barberie, LFUCG  
Nancy Albright, LFUCG  
Michael Cravens, LFUCG  
Susan Speckert, LFUCG  
Paul Schwartz, EPA



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 4  
ATLANTA FEDERAL CENTER  
61 FORSYTH STREET  
ATLANTA, GEORGIA 30303-8960

APR 29, 2020

CERTIFIED MAIL  
RETURN RECEIPT REQUESTED

Lexington-Fayette Urban County Government  
Division of Water Quality  
c/o Mr. Charles H. Martin, P.E., Director  
125 Lisle Industrial Ave., Suite 180  
Lexington, Kentucky 40511

Re: Consent Decree # 5:06-cv-386  
United States Approval of Request to Extend Schedule for Submittal of 2020 1st Quarterly  
Report Based on Force Majeure Event

Dear Mr. Martin:

The United States Environmental Protection Agency and the United States Department of Justice, in consultation with the Kentucky Department for Environmental Protection (KYDEP), have reviewed your letter of April 6, 2020, requesting an extension of the submission deadline for the 2020 1<sup>st</sup> Quarterly Report. Your letter describes a disruption in the productivity of staff during an adjustment to work from home due to the strategies adopted by Lexington in response to the Kentucky Governor's State of Emergency Executive Order. This order was issued in response to the Covid-19 pandemic. You have requested to extend the Quarterly Report deadline by 31 days so that the individuals responsible for compiling, reviewing, and presenting the required information have sufficient time to ensure submission of a complete and accurate report. Your attorney subsequently clarified, in a phone call on April 21, 2020, that this request is being made under the force majeure provisions of your Consent Decree.

The description of circumstances affecting your submittal of the quarterly report appears to meet the criteria of a force majeure event and your letter contains the information required to be included in a force majeure notice under Paragraph 55 of the Consent Decree for extension of a required reporting deadline.<sup>1</sup> Therefore, pursuant to Paragraph 56 of the Consent Decree, the United States, after consultation with KYDEP, hereby approves your request to extend the deadline for submittal of the 2020 1<sup>st</sup> Quarterly Report from April 30, 2020 to May 31, 2020. In this case, the United States does not consider this one-time, one-month extension for the quarterly report to be a material extension of time, and therefore under paragraph 56, this does not trigger the circumstances under which a Consent Decree modification would be necessary.

To facilitate prompt review of future requests of this nature, we ask that you reference the relevant provisions of the Consent Decree and the legal framework under which you are seeking relief. Your letter requested an "extension" of a deadline without indicating whether you were seeking a

---

<sup>1</sup> Paragraph 55 of the Consent Decree requires that a force majeure notice state the anticipated duration of any delay, its cause(s), LFUCG's past and proposed actions to prevent or minimize any delay, a schedule for carrying out those actions, and LFUCG's rationale for attributing any delay to a force majeure event.



modification of the Consent Decree, relief under force majeure provisions of the Consent Decree, or the exercise of enforcement discretion in the assessment of stipulated penalties.

If you have questions, please contact Ms. Laurie Jones on my staff at (404) 562-9201.

Sincerely,

**CAROL KEMKER**

Digitally signed by CAROL  
KEMKER  
Date: 2020.04.29 16:38:54 -04'00'

Carol L. Kemker

Director

Enforcement and Compliance Assurance Division

cc: Valerie Mann, USDOJ  
Robert Fentress, EPA OECA  
Carolyn M. Brown, Dinsmore & Shoh, LLP  
Anna Claire Skinner, Dinsmore & Shoh, LLP



700 West Liberty Street | Louisville, KY 40203-1911  
Phone: 502.540.6000 | LouisvilleMSD.org

March 23, 2020

Michael B. Kroeger, Director  
Division of Enforcement  
Kentucky Department for Environmental Protection  
300 Sower Blvd.  
Frankfort, Kentucky 40601

Mary Jo Bragan, Chief  
Water Enforcement Branch  
Enforcement and Compliance Assurance Division  
U.S. EPA, Region 4  
61 Forsyth Street, S.W.  
Atlanta, GA 30303-8960

Re: Coronavirus: Notice of Force Majeure Event  
Amended Consent Decree, Case No. 3:08-cv-00608-CRS

Dear Ms. Bragan and Mr. Kroeger:

Pursuant to Paragraphs 67 and 68 of the Amended Consent Decree, entered April 15, 2009, MSD provides this notice of force majeure in the event it experiences issues that lead to non-compliance with the Consent Decree. The nation and the Commonwealth of Kentucky stand under declarations of emergency stemming from the coronavirus pandemic. Verbal notification was provided to US EPA and the Cabinet on March 25 and 26, 2020.

With this quickly evolving health situation affecting all aspects of our country, we expect that MSD could experience project delays. For example, we expect to adjust our staffing to comply with the directives of health officials and to protect our work force so that we are in position to sustain the public health services of the wastewater utility. Additionally, MSD may experience delays in its supply chain. MSD will track all such issues and will keep the Regulators apprised of its progress.

We recognize that Consent Decree force majeure notification is but one aspect of the need for comprehensive communication with the Regulators that will be necessary while MSD and its staff sustain the critical public health operation of the wastewater utility under extremely difficult times.

Please contact me when you are able to discuss further.

Respectfully,

James A. Parrott  
Executive Director

Cc: Paula Purifoy  
Compliance Library



---

**Marathon Petroleum Company LP**

539 South Main Street  
Findlay, OH 45840  
Telephone 419/422-2121  
FAX 419/425-7040

March 27, 2020

*SENT VIA EMAIL AND U.S. MAIL  
(RETURN RECEIPT REQUESTED)*

Chief, Environmental Enforcement Section  
Environmental and Natural Resources Division  
U.S. Department of Justice  
Box 7611 Ben Franklin Station  
Washington, DC 20044-7611  
Re: DOJ No. 90-5-2-1-09915

Director, Air Enforcement Division  
Office of Civil Enforcement  
U.S. Environmental Protection Agency  
Mail Code 2242-A  
1200 Pennsylvania Avenue, N. W.  
Ariel Rios Building South  
Room 1119  
Washington, DC 20460-0001

Associate Director  
Air, Toxics, and Inspections Coordination Branch  
(6 EN-A)  
U.S. EPA, Region 6  
1445 Ross Avenue  
Dallas, Texas 75202

Director  
Air, Pesticides and Toxics Management Division  
EPA Region 4  
61 Forsyth Street (4APTMD-AEEB)  
Atlanta, Georgia 30303

Air and Radiation Division  
EPA Region 5  
77 W. Jackson Blvd. (AE – 17J)  
Chicago, IL 60604  
Attn: Compliance Tracker

**Re: Notice of *Force Majeure* Event  
Consent Decree in *United States v. Marathon Petroleum Company LP, et al.*  
Case No. 1:12-cv-11544 (E.D. Mich.)**

On behalf of Marathon Petroleum Company LP and Catlettsburg Refining, LLC, each of which is a wholly-owned, indirect subsidiary of Marathon Petroleum Corporation (collectively, “MPC”), and pursuant to United States’ and various states efforts to respond to the novel coronavirus (COVID-19), this letter serves as notice of a *force majeure* event under Paragraph 89 of the above-referenced Consent Decree. MPC requests temporary relief from certain provisions of the Consent Decree in support of its efforts to minimize risk of exposure and otherwise respond to COVID-19 without sacrificing the protection of human health and the environment at its refineries located in Canton, Ohio; Catlettsburg, Kentucky; Detroit, Michigan;



Garyville, Louisiana; Robinson, Illinois; and Texas City, Texas (each a “Covered Refinery,” as defined in the Consent Decree).

MPC is committed to safe and environmentally responsible operation of its operating sites and fully embraces the emergency actions necessary to protect public health. To protect its employees, site contractors, and the general public, MPC is seeking to temporarily limit certain on-site activities by company personnel and contract personnel as part of its larger COVID-19 response to reduce social contact and comport with the “social distancing” guidelines issued by the Centers for Disease Control and Prevention (CDC) and the President of the United States through his “Coronavirus Guidelines for America” issued on March 16, 2020. These guidelines recommend avoiding close contact with other individuals (within 6 feet), avoidance of social gatherings of more than 10 people, avoiding discretionary travel, and working from home whenever possible. In addition, various states and cities have issued “stay-at-home” orders for those not engaged in critical work activities.

As a member of a critical infrastructure industry, MPC has a special responsibility to continue the safe and environmentally responsible operation of our facilities to ensure fuel supplies are maintained so that other critical infrastructure continues to function during the ongoing pandemic. We have already instituted a “work-from-home” policy for non-essential personnel consistent with CDC guidance. Despite many of the present actions taken by governments and businesses, the virus continues to spread. Many more cases are being reported daily. We believe that additional restrictions to site personnel will likely be necessary to slow the spread and protect our operations and maintenance personnel essential to running our assets safely and reliably. These steps could include, but are not limited to, restricted access for third-party contractors, further restriction of on-site staff to only core operating and maintenance personnel, and reduction of laboratory personnel. As continued restrictions persist, we are also preparing for potential consequences in the supply chain, including inability to transport samples to third-party laboratories and inability to receive consumables.

To achieve the common goal of inhibiting the spread of COVID-19, some periodic sampling, testing, recordkeeping and reporting activities required under the Consent Decree can and should be deferred during the present phase of the response in order to protect essential personnel necessary for safe refinery operations. These actions can be safely and responsibly deferred then resumed as soon as conditions are appropriate.

MPC, therefore, submits this notice to the United States that ongoing events surrounding COVID-19 constitute a *force majeure* event under Paragraph 89 of the Consent Decree, and that the events may delay performance of certain obligations under the Consent Decree. Obligations under the Consent Decree that may be delayed due to the *force majeure* event include, but are not limited to, those that require third-party contractors or other non-essential personnel to be physically present at the refineries; that require international, interstate or other currently-restricted travel by employees or contractors; that require international or interstate shipment of samples for analysis; or that require actions of third parties (e.g., accredited laboratories) that may also have personnel and resource limitations or restrictions due to their own or their political jurisdictions’ responses to COVID-19.

Central to MPC's claim of *force majeure* is the recognition that many of these activities drive increased social interactions with third-party contractors that enter and leave our facilities, and other neighboring facilities, daily. Some of the functions identified in this letter also require contractors and consultants to engage in significant travel and overnight accommodations, which further increases the chances of spreading the virus. This runs counter to the "social distancing" recommendations from the CDC, the President of the United States, and various state and city directives. Complicating matters further, many contractors and consultants will be not be reporting daily to their normal workplaces and have instituted travel bans for their employees, meaning there is a shortage of qualified personnel to complete certain regulatory requirements. Even though we are prepared to conduct much of our work remotely, it is unprecedented to carry out certain work entirely via remote communications, and indeed impossible to carry out others. As reflected in this notice, most of the anticipated delays in compliance reflect a focus on responsibly minimizing onsite activities and social interaction and a lesser access to complete information due to self-isolation (e.g., employee or contractor personnel held home, sick or quarantined).

This letter is intended to serve as an initial, advance notification that the ongoing events surrounding COVID-19 constitute a *force majeure* event. Events surrounding COVID-19, and the efforts of MPC and federal, state, and local authorities to combat the spread of the novel coronavirus remain fluid. Accordingly, MPC intends to supplement this advance notification with additional information to support this claim of *force majeure* as set forth in Paragraph 89 of the Consent Decree.

Significantly, the obligations that may be delayed by the *force majeure* event described in this letter will not, in MPC's judgment, cause or contribute to an endangerment to public health, welfare, or the environment.

We believe that by taking these measures, we can do our part to slow the spread of the COVID-19 virus. This notice of *force majeure* covers only those provisions requiring activities that are inconsistent with implementation of MPC's COVID-19 response, while maintaining safe and environmentally responsible operation. If you have any questions about this request, please contact me with any questions at 419-421-3871 or [racade@marathonpetroleum.com](mailto:racade@marathonpetroleum.com).

Sincerely,



Ruth A. Cade  
Director, Refining Environmental & Assurance  
Marathon Petroleum Company LP

Electronic Copy in .pdf format to:  
[parrish.robert@epa.gov](mailto:parrish.robert@epa.gov)  
[foley.patrick@epa.gov](mailto:foley.patrick@epa.gov)  
[dickens.brian@epa.gov](mailto:dickens.brian@epa.gov)





March 23, 2020

U.S. Environmental Protection Agency, Region 1  
5 Post Office Square, Suite 100  
Mailcode OES 04-3  
Boston, MA 02109-3912  
Attention: Douglas Koopman

**RE: Boston Logan International Airport NPDES Permit MA0000787  
Request for Temporary Suspension of Monitoring Requirements**

Dear Mr. Koopman:

Like all US Airports, the Massachusetts Port Authority (Massport) is experiencing unprecedented impacts at all of our facilities due to the Coronavirus (COVID-19) national emergency. As we strive to meet new operating demands, our resources must focus on the health and safety of the traveling public and our employees. As such, we are requesting a temporary suspension of the stormwater monitoring and inspection requirements of Logan International Airport's NPDES Permit MA0000787.

Massport's NPDES Permit for Logan International Airport requires monthly wet and dry weather monitoring, deicing event monitoring (twice per deicing season) and quarterly monitoring. For first quarter 2020, we completed monthly dry and wet weather events for January and February, the dry weather event for March, one deicing event, and the first quarter sampling event of 2020. We are requesting a suspension of NPDES Permit monitoring requirements for at least the next two months (April and May 2020) including the second deicing event for the 2019-2020 deicing season, the wet weather event for the month of March, and dry and wet weather sampling events in April in May. Reporting for the sampling that has been completed to date will be submitted to EPA.

We have carefully examined the procedures required to collect accurate, defensible data and have identified the following potential concerns that could impact sample collection:

**SIDA restrictions**

- The Security Badge Office is providing limited services. Several sampling locations are within the Security Identification Display Area (SIDA) which require security badges for sampling personnel.
- Access to secure areas may be restricted to essential personnel.

### **Social Distancing**

- Sample collection at Logan Airport requires teams of at least two individuals for health and safety reasons. Many of Logan's outfalls are located along the shoreline close to open water or samples must be collected from deep sampling vaults. During storm events, sample collection is particularly challenging and ensuring the safety of personnel is of utmost importance.
- Achieving and maintaining a 6-foot distance as the stormwater samplers perform tasks in tandem is enormously difficult if not impossible. Some of the specific interactions involved in the sampling activities include driving in the same SIDA-permitted vehicle (only one vehicle per team), filling sample bottles, handing off sample coolers to laboratory couriers, purchasing or renting sampling equipment and other supplies, and/or accessing facilities at Logan Airport.
- There are limited opportunities to wash hands and disinfect equipment in the field, limited supply of available hand sanitizer, and limited availability of PPE from employers (e.g. nitrile gloves and N95 masks)
- Entry into SIDA areas for sample collection requires interaction with the SIDA Security Gate and close interaction with Massport's Port Police who is also in close contact with the numerous others passing through the security checkpoint.

### **Sampling/Chain of Custody**

- If infection rates soar, personnel trained to conduct sampling at the airport and who have security clearance at Logan Airport may not be available.
- Sample containers/coolers typically change hands approximately 5 times if not more. (Laboratory personnel to courier, courier to office receiver, office receiver to sampler, sampler to courier, courier to laboratory personnel)

### **Laboratory Operation**

- As new restrictions are imposed to limit the transmission of COVID-19, there will likely be limited availability for sample analysis and courier services. Massport has already received notification on March 19, 2020 from the laboratory that performs bacterial analysis that the laboratory will be temporarily closed from March 23, 2020 through at least April 4, 2020, except for very limited hours on select days.

### **State and Federal Mandates**

- At this time, a State of Emergency has been declared in Massachusetts with several emergency orders, including closing of several facilities, limitations of gatherings, and travel restrictions. Additional federal restrictions have been mandated. Massport and sampling staff must adhere to all state and federal mandates.

As always, Massport is committed to meeting it's NPDES Permit obligations with its continued implementation of stormwater pollution prevention best management practices but as presented above, is facing extraordinary circumstances at this current time. We, therefore, respectfully request your consideration to suspend stormwater sampling through May 31, 2020.

Thank you very much.

Sincerely,

*Brian J. Hennessey*

Brian J. Hennessey, P.E, A.A.E, I.A.P.  
Assistant Director, Capital Programs & Environmental Management  
Massachusetts Port Authority

Cc: Rosanne Joyce, Massport  
George Papadopoulos, US EPA Region 1



**Melcher, John**

---

**Subject:** FW: NetDMR COR Submission Received for: MA0000787

---

**From:** Handler, Neil  
**Sent:** Tuesday, April 07, 2020 4:49 PM  
**To:** [rjoyce@massport.com](mailto:rjoyce@massport.com)  
**Cc:** Koopman, Douglas <[koopman.douglas@epa.gov](mailto:koopman.douglas@epa.gov)>; Kopf, Jeff <[Kopf.Jeff@epa.gov](mailto:Kopf.Jeff@epa.gov)>  
**Subject:** RE: NetDMR COR Submission Received for: MA0000787

Hi Rosanne,

Hope you are doing ok!

I was just looking through the most recent DMRs that were submitted on behalf of Logan International Airport for the monitoring period ending 3/31/20. As noted on the R1 NetDMR home page, we are asking that when using the NODI code Z, a facility provide an explanation in either the comment section of the DMR or in a separate attachment added to the DMR. The Explanation should identify the specific reasons for the sampling/reporting delay and how COVID-19 was the cause of the noncompliance. Details related to NPDES Compliance and Reporting in Response to the COVID-19 Pandemic can be found at:  
<https://netdmr.zendesk.com/hc/en-us/articles/360041746691-Covid-19-Information-Page>.

We would ask that you attach a copy of the March 23, 2020 letter which you sent to EPA to all DMRs in which you use the NODI code Z.

Thanks and stay safe,

Neil

Neil Handler  
Senior Enforcement Coordinator  
EPA Region 1  
5 Post Office Square, Suite 100 (OES04-4)  
Boston, MA 02109-3912

(617) 918-1334  
Fax (617) 918-0334  
[handler.neil@epa.gov](mailto:handler.neil@epa.gov)

---

**From:** [netdmr-notification@epa.gov](mailto:netdmr-notification@epa.gov) <[netdmr-notification@epa.gov](mailto:netdmr-notification@epa.gov)>  
**Sent:** Tuesday, April 07, 2020 3:58 PM  
**To:** [rjoyce@massport.com](mailto:rjoyce@massport.com); Nguyen, Nam <[Nguyen.Nam@epa.gov](mailto:Nguyen.Nam@epa.gov)>; Handler, Neil <[Handler.Neil@epa.gov](mailto:Handler.Neil@epa.gov)>  
**Subject:** NetDMR COR Submission Received for: MA0000787

NetDMR has received the following 16 DMR(s) during the signing process.

CORs have been created for the following DMRs. These DMRs will be forwarded for further processing:

-----  
Permitted Facility Name: LOGAN INTERNATIONAL AIRPORT  
Permit ID: MA0000787  
Permitted Feature: 006  
Discharge: Q - Runway Perimeter Quarterly  
Monitoring Period End Date: 03/31/20  
Signing Status: SIGNED SUCCESSFULLY  
Comment:  
Attachments included in the COR: No  
-----

Permitted Facility Name: LOGAN INTERNATIONAL AIRPORT  
Permit ID: MA0000787  
Permitted Feature: 005  
Discharge: Q - Northwest Quarterly  
Monitoring Period End Date: 03/31/20  
Signing Status: SIGNED SUCCESSFULLY  
Comment:  
Attachments included in the COR: No  
-----

Permitted Facility Name: LOGAN INTERNATIONAL AIRPORT  
Permit ID: MA0000787  
Permitted Feature: 004  
Discharge: Q - Marerick Street quarterly  
Monitoring Period End Date: 03/31/20  
Signing Status: SIGNED SUCCESSFULLY  
Comment:  
Attachments included in the COR: No  
-----

Permitted Facility Name: LOGAN INTERNATIONAL AIRPORT  
Permit ID: MA0000787  
Permitted Feature: 004  
Discharge: C - Maverick Street Dry  
Monitoring Period End Date: 03/31/20  
Signing Status: SIGNED SUCCESSFULLY  
Comment:  
Attachments included in the COR: No  
-----

Permitted Facility Name: LOGAN INTERNATIONAL AIRPORT  
Permit ID: MA0000787  
Permitted Feature: 004  
Discharge: A - MAVERICK ST OUTFALL-STORMWATER  
Monitoring Period End Date: 03/31/20  
Signing Status: SIGNED SUCCESSFULLY  
Comment:  
Attachments included in the COR: No  
-----

Permitted Facility Name: LOGAN INTERNATIONAL AIRPORT  
Permit ID: MA0000787  
Permitted Feature: 003  
Discharge: Q - Porter Street quarterly  
Monitoring Period End Date: 03/31/20

Signing Status: SIGNED SUCCESSFULLY

Comment:

Attachments included in the COR: No

-----

Permitted Facility Name: LOGAN INTERNATIONAL AIRPORT

Permit ID: MA0000787

Permitted Feature: 003

Discharge: C - Porter Street Dry

Monitoring Period End Date: 03/31/20

Signing Status: SIGNED SUCCESSFULLY

Comment:

Attachments included in the COR: No

-----

Permitted Facility Name: LOGAN INTERNATIONAL AIRPORT

Permit ID: MA0000787

Permitted Feature: 003

Discharge: A - PORTER ST OUTFALL - STORMWATER

Monitoring Period End Date: 03/31/20

Signing Status: SIGNED SUCCESSFULLY

Comment:

Attachments included in the COR: No

-----

Permitted Facility Name: LOGAN INTERNATIONAL AIRPORT

Permit ID: MA0000787

Permitted Feature: 002

Discharge: Q - West quarterly

Monitoring Period End Date: 03/31/20

Signing Status: SIGNED SUCCESSFULLY

Comment:

Attachments included in the COR: No

-----

Permitted Facility Name: LOGAN INTERNATIONAL AIRPORT

Permit ID: MA0000787

Permitted Feature: 002

Discharge: C - West Dry

Monitoring Period End Date: 03/31/20

Signing Status: SIGNED SUCCESSFULLY

Comment:

Attachments included in the COR: No

-----

Permitted Facility Name: LOGAN INTERNATIONAL AIRPORT

Permit ID: MA0000787

Permitted Feature: 002

Discharge: A - WEST OUTFALL - STORMWATER

Monitoring Period End Date: 03/31/20

Signing Status: SIGNED SUCCESSFULLY

Comment:

Attachments included in the COR: No

-----

Permitted Facility Name: LOGAN INTERNATIONAL AIRPORT

Permit ID: MA0000787

Permitted Feature: 001

Discharge: Q - North quarterly  
Monitoring Period End Date: 03/31/20  
Signing Status: SIGNED SUCCESSFULLY  
Comment:  
Attachments included in the COR: Yes

Q12020NPDESMonitoringReport.pdf  
-----

Permitted Facility Name: LOGAN INTERNATIONAL AIRPORT  
Permit ID: MA0000787  
Permitted Feature: 001  
Discharge: E - North internal tanks  
Monitoring Period End Date: 03/31/20  
Signing Status: SIGNED SUCCESSFULLY  
Comment:  
Attachments included in the COR: Yes

Mar2020SwissportDMRs-001-E.pdf  
-----

Permitted Facility Name: LOGAN INTERNATIONAL AIRPORT  
Permit ID: MA0000787  
Permitted Feature: 001  
Discharge: D - North internal tanks  
Monitoring Period End Date: 03/31/20  
Signing Status: SIGNED SUCCESSFULLY  
Comment:  
Attachments included in the COR: Yes

Mar2020SwissportDMRs-001-D.pdf  
-----

Permitted Facility Name: LOGAN INTERNATIONAL AIRPORT  
Permit ID: MA0000787  
Permitted Feature: 001  
Discharge: C - North Dry  
Monitoring Period End Date: 03/31/20  
Signing Status: SIGNED SUCCESSFULLY  
Comment:  
Attachments included in the COR: No

-----  
Permitted Facility Name: LOGAN INTERNATIONAL AIRPORT  
Permit ID: MA0000787  
Permitted Feature: 001  
Discharge: A - NORTH OUTFALL - STORMWATER  
Monitoring Period End Date: 03/31/20  
Signing Status: SIGNED SUCCESSFULLY  
Comment:  
Attachments included in the COR: Yes

March2020NPDESMonitoringReport.pdf

Thank you.

For information on the CDX/NetDMR migration process for individuals with an existing NetDMR account please see the following link <https://netdmr.zendesk.com/hc/en-us/articles/115002191163-NetDMR-to-CDX-Move-Walkthrough-Document>. Individuals with migration issues should contact [NPDESeReporting@epa.gov](mailto:NPDESeReporting@epa.gov) or 877-227-8965. Questions about CDX should be directed to the CDX Help Desk 888-890-1995. Question about NetDMR can be sent to EPA Region 1 at [R1.NetDMR@epa.gov](mailto:R1.NetDMR@epa.gov).

## Melcher, John

---

**From:** Koopman, Douglas  
**Sent:** Wednesday, April 01, 2020 3:11 PM  
**To:** Bhennessy@massport.com  
**Cc:** Joyce, Rosanne; Susannah.king@state.ma.us; kevin.brander@state.ma.us  
**Subject:** EPA response to sampling request

Dear Mr. Hennessey,

Thank for your letter of March 23, 2020, requesting guidance with respect to sampling requirements under Boston Logan International Airport NPDES permit (MA0000787) in light of the COVID-19 pandemic.

In response to noncompliance related to the COVID-19 pandemic, Assistant EPA Administrator for Enforcement and Compliance Assurance Susan Parker Bodine has issued a temporary policy announcing the exercise of enforcement discretion for certain environmental obligations. That memo, accessible at the link below, establishes specific conditions to be met, if you are unable to meet those obligations identified in your NPDES permit.

<https://www.epa.gov/sites/production/files/2020-03/documents/oecamemooncovid19implications.pdf>

As indicated in the Bodine memo, entities should make every effort to comply with their NPDES permits. However, if for reasons related to COVID-19, you are able to obtain some but not all of your samples or analyze some but not all of your samples required by your permit, please submit your discharge monitoring reports (DMRs) through NetDMR by the due date with the information you have been able to obtain. Please also provide an explanation in either the comment section of the DMR or in a separate attachment describing how COVID-19 impacted your ability to take or analyze all of your required samples. If you are not able to sample or analyze any of the samples required by your permit, please submit your DMRs through NetDMR by the due date using the No Data Indicator or NODI code of "Z" - "COVID-19". When using the NODI code Z, a facility should provide an explanation in either the comment section of the DMR or in a separate attachment added to the DMR. The Explanation should identify the specific reasons for the sampling/reporting delay and how COVID-19 was the cause of the noncompliance. If you need help adding an attachment through NetDMR please send an email to [R1.NetDMR@epa.gov](mailto:R1.NetDMR@epa.gov).

Details related to NPDES Reporting in Response to the COVID-19 Pandemic can be found at:

<https://netdmr.zendesk.com/hc/en-us/articles/360041746691-Covid-19-Information-Page>

Feel free to contact myself or attorney Jeff Kopf (617) 918-1796 if you have questions on how this policy relates to your circumstances.

Thank you

Doug Koopman

Cc (VIA Email): Rosanne Joyce, Massport

Susy King MADEP

Kevin Brander MADEP NERO

Douglas Koopman  
(617)918-1747

[Koopman.Douglas@epa.gov](mailto:Koopman.Douglas@epa.gov)

EPA Region I

5 Post Office Square, Suite 100

Mail code 04-03

Boston MA, 02109-3912



## Melcher, John

---

**Subject:** FW: MWRA update - impacts of COVID-19 on monitoring

---

**From:** Borci, Todd

**Sent:** Thursday, March 26, 2020 1:24 PM

**To:** Reilley, Betsy <[Betsy.Reilley@mwra.com](mailto:Betsy.Reilley@mwra.com)>; Liebman, Matt <[Liebman.Matt@epa.gov](mailto:Liebman.Matt@epa.gov)>;  
[catherine.vakalopoulos@state.ma.us](mailto:catherine.vakalopoulos@state.ma.us); [kevin.brander@state.ma.us](mailto:kevin.brander@state.ma.us)

**Cc:** Leo, Wendy <[Wendy.Leo@mwra.com](mailto:Wendy.Leo@mwra.com)>; Wu, David <[David.Wu@mwra.com](mailto:David.Wu@mwra.com)>; Keay, Kenneth  
<[Kenneth.Keay@mwra.com](mailto:Kenneth.Keay@mwra.com)>; Card, Bethany <[Bethany.Card@mwra.com](mailto:Bethany.Card@mwra.com)>

**Subject:** RE: MWRA update - impacts of COVID-19 on monitoring

Betsy:

Thanks for your message. We have been waiting (and waiting) for a memo from EPA HQ that will reportedly address compliance monitoring activities, but in its absence the standard message I have been providing to folks is simply document what you can and cannot do and the associated reasons (your email below should take care of that for now).

Should you have specific questions or concerns always feel free to email or call.

Thanks again.

tb

---

Todd J. Borci  
Water Compliance Section  
Enforcement and Compliance Assurance Division  
U.S. EPA New England  
5 Post Office Square  
Suite 100 (04-4)  
Boston, MA 02109-3912  
(617) 918 -1358  
[borci.todd@epa.gov](mailto:borci.todd@epa.gov)

---

**From:** Reilley, Betsy <[Betsy.Reilley@mwra.com](mailto:Betsy.Reilley@mwra.com)>

**Sent:** Thursday, March 26, 2020 12:47 PM

**To:** Liebman, Matt <[Liebman.Matt@epa.gov](mailto:Liebman.Matt@epa.gov)>; Borci, Todd <[Borci.Todd@epa.gov](mailto:Borci.Todd@epa.gov)>;  
[catherine.vakalopoulos@state.ma.us](mailto:catherine.vakalopoulos@state.ma.us); [kevin.brander@state.ma.us](mailto:kevin.brander@state.ma.us)

**Cc:** Leo, Wendy <[Wendy.Leo@mwra.com](mailto:Wendy.Leo@mwra.com)>; Wu, David <[David.Wu@mwra.com](mailto:David.Wu@mwra.com)>; Keay, Kenneth  
<[Kenneth.Keay@mwra.com](mailto:Kenneth.Keay@mwra.com)>; Card, Bethany <[Bethany.Card@mwra.com](mailto:Bethany.Card@mwra.com)>

**Subject:** MWRA update - impacts of COVID-19 on monitoring

Hello,

I left each of you a voicemail to inform you that we have some impacts to our monitoring programs. Every effort is being made to maintain monitoring, focused on priority/compliance programs. NPDES permit required monitoring at DITP, and CSOs, will continue.

However, MA Bay water column monitoring is unlikely to occur for March. We will continue to monitor this program and ship availability for the April monthly sampling.

Monitoring in the rivers and Boston Harbor is reduced:

- Monitoring in the variance areas is a priority, and will continue, although at a reduced level, via shoreline sampling, and for bacteria only (and nutrients at the usual limited sites). This monitoring program runs April-October (nutrients are year round and is continuing in the variance rivers).
- Monitoring in Boston Harbor and Neponset River is on hold for now.

I would be happy to discuss this in more detail with you. Let me know what questions you have. I can be reached via email, or cell 617-839-2997.

I hope you are all doing well during these challenging times!

Betsy

*Betsy Reilley, Ph.D.  
Director, Environmental Quality  
Water and Wastewater  
MA Water Resources Authority  
100 First Avenue  
Boston, MA 02129  
office: 508-424-3613 or  
617-788-4940  
cell: 617-839-2997  
[betsy.reilley@mwra.com](mailto:betsy.reilley@mwra.com)*



**Water and Sewer**  
PO Box 330316 • 3071 SW 38 Avenue  
Miami, Florida 33233-0316  
T 305-665-7471

**VIA ELECTRONIC CORRESPONDENCE**

April 3, 2020

CCN: 63142  
File No: 8.DC.20.52

Chief, Environmental Enforcement Section  
Environment and Natural Resources Division  
U.S. Department of Justice  
P.O. Box 7611  
Tom Mariani  
Washington, D.C. 20044-7611  
RE: DOJ No. 90-5-1-1-4022/1  
[Tom.Mariani@usdoj.gov](mailto:Tom.Mariani@usdoj.gov)

Chief, Clean Water Enforcement Branch  
Water Protection Division  
Attn: Brad Ammons  
U.S. Environmental Protection Agency, Region 4  
61 Forsyth Street, S.W.  
Atlanta, Georgia 30303  
[Ammons.Brad@epa.gov](mailto:Ammons.Brad@epa.gov)

Rachael Amy Kamons  
Environmental Enforcement Section  
U.S. Department of Justice  
P.O. Box 7611  
Ben Franklin Station  
Washington, D.C. 20044-7611  
[Rachael.Kamons@usdoj.gov](mailto:Rachael.Kamons@usdoj.gov)

Florida Department of Environmental Protection  
Southeast District – West Palm Beach  
3301 Gun Club Road, MSC 7210-1  
West Palm Beach, FL 33406  
Attn: Compliance/Enforcement Section  
[Jason.Andreotta@dep.state.fl.us](mailto:Jason.Andreotta@dep.state.fl.us)

**RE: Consent Decree (Case: No. 1:12-cv-24400-FAM),  
Reference DOJ Case No. 90-5-1-1-4022/1,  
Section XI, Paragraph 52 – Force Majeure,  
Section XVII, Paragraph 77 – Notices,  
Notification of Force Majeure due to Novel Coronavirus Disease (COVID-19) for  
Consent Decree Appendix D-2, Capital Improvement Projects**

Dear Sir/Madam:

In accordance with the provisions of Section XI, Paragraph 52 of the above referenced Consent Decree (CD), on March 20, 2020, Miami-Dade County (County) electronically notified the United States Environmental Protection Agency (EPA) and Florida Department of Environmental Protection (FDEP) of a Potential Force Majeure impacting Consent Decree (CD) Capital Improvement Projects (CIP) due to the Novel Coronavirus Disease (COVID-19) Pandemic and corresponding National, State, and Local Emergencies. Consent Decree projects may experience delays during the design, permitting, procurement and construction phases.

In accordance with Section XI, Paragraph 52, this potential force majeure notification letter shall further describe and explain the reasons for the delays; the anticipated duration of the delay; all actions taken or to be taken to prevent or minimize the delay; a schedule for implementation of any measures to be taken to prevent or mitigate the delay or the effect of the delay; County's rationale for attributing such delay to a force majeure event if it intends to assert such a claim; a statement as to whether, in the opinion of the County, such event may cause or contribute to an endangerment to public health or the environment, and documentation to support the force majeure claim.

**Explanation and description of the reasons for the delay**

On March 9, 2020, the Governor of the State of Florida declared a State of Emergency for the State of Florida related to Novel Coronavirus Disease 2019 (COVID-19). On March 11, 2020, the Mayor of Miami-Dade County declared a Local State of Emergency in order to protect the public's health, safety and welfare. On March 13, 2020 the President of the United States (US) issued a proclamation declaring a National Emergency concerning COVID-19 Outbreak finding that the outbreak in the US constitutes a national emergency, beginning March 1, 2020.

The County has been impacted as a result of the COVID-19 emergency. Urgent measures are being taken to ensure that appropriate resources are allocated to address public health concerns. On March 19, 2020, the County Mayor extended the Local State of Emergency and identified government offices, open construction sites, engineering services as essential services to be maintained during the state of emergency. However, on March 28, 2020, County Emergency Order 14-20 was issued which suspended all laws, statutes, codes and regulations relating to County employees performing building code functions including, but not limited to, the review of plans, issuance of permits, performance of inspections and issuance of certificates of occupancy and completion and temporary certificates of occupancy, and all activities related thereto.

As of the date of this notification, the County has received communications from Contractors, Consultants and Vendors regarding delays and concerns in obtaining permits, supplies, equipment and challenges ensuring adequate staffing.

CD Appendix D Capital Improvement Projects that are in design, permitting, procurement and/or construction phases will be impacted by the ongoing COVID-19 emergency.

**Action taken or to be taken to prevent or minimize the delay**

The County will take the following steps to prevent or mitigate delay or the effect of the delay:

1. The County is facilitating work from home for Central Office support teams utilizing VPN, teleconferencing and other tools to keep the program moving forward.

2. Design Consultant firms continue to work but are performing their duties remotely. Some design firms have notified the County of concerns about potential labor availability if too many of their employees are impacted by the virus.
3. County personnel responsible for administering procurement will continue providing services but prioritize emergencies as necessary.
4. Multiple municipal permitting agencies are assessing their permitting and inspection procedures and implementing improved protocols.
5. Construction sites currently remain open and employees at those sites have received training, materials and equipment to help them continue work in a safe manner.
6. The County shall closely oversee CD Projects' progress and adherence to the respective schedules.
7. The County shall report delays to EPA and FDEP as they arise in accordance with the CD.

**Schedule for implementation of any measures to be taken or to minimize the delay**

Immediately upon notification of the emergency orders, the County began the progressive implementation of the actions above regarding the facilitation of remote work (where possible), providing materials and training for employees at active work sites so they can continue work as safely as possible, revising processes and procedures regarding permitting, consultant and contractor payments, procurement and other support elements to keep the program moving forward.

The County shall continue to monitor progress of the projects and keep EPA and FDEP informed of any changes that may impact CD milestones.

**Force majeure rationale**

On March 11, 2020, the World Health Organization (WHO) declared COVID-19 a pandemic. National, state and local agencies are taking actions to suppress and control the spread of COVID-19. The County is taking preventative measures to contain the spread and the impacts of the virus. The County attributes any delays resulting from impacts of COVID-19 as a force majeure event.

**Anticipated duration of the delay**

At this time, the duration of the pandemic and corresponding impacts to the County are uncertain. However, the County will closely monitor the progress of all projects and report any delays to EPA and FDEP upon becoming known to the County in accordance with the CD.

**Cause or contribution to an endangerment to public health, welfare or the environment**

There is no indication that potential delays in design, permitting, procurement and/or construction of CD projects present an immediate endangerment to public health, welfare or the environment.

I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering such information, the information submitted is, to the best of my knowledge and belief, true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

Should you have any questions regarding this matter, please call me at (786) 552-8571.

Sincerely,

Lynnette M. Ramirez P.E.  
Senior Advisor, Capital Improvement Programs & Regulatory Compliance

ec: Barbara Jean Throne  
Senior Assistant Attorney General, Complex Litigation  
Office of the Attorney General  
PL-01, The Capitol  
Tallahassee, FL 32399-1050  
850-414-3699  
[Barbara.Throne@myfloridalegal.com](mailto:Barbara.Throne@myfloridalegal.com)

Florida Department of Environmental Protection  
Southeast District – West Palm Beach  
3301 Gun Club Road, MSC 7210-1  
West Palm Beach, FL 33406  
Attn: Compliance/Enforcement Section  
[Lisa.M.Self@dep.state.fl.us](mailto:Lisa.M.Self@dep.state.fl.us)

[Mike.Bechtold@dep.state.fl.us](mailto:Mike.Bechtold@dep.state.fl.us)  
[Megan.Ticknor@FloridaDEP.gov](mailto:Megan.Ticknor@FloridaDEP.gov)  
[Sed.wastewater@dep.state.fl.us](mailto:Sed.wastewater@dep.state.fl.us)

Mayor Carlos A. Gimenez  
Miami-Dade County  
111 NW First Street 29<sup>th</sup> Floor  
Miami, Florida 33128

Kevin T. Lynskey, Director  
Miami-Dade Water and Sewer Department  
3071 SW 38<sup>th</sup> Avenue  
Miami, Florida 33146

Jack Osterholt, Deputy Mayor/Director  
Miami-Dade Regulatory and  
Economic Resources  
111 NW 1st Street. 29th Floor  
Miami, FL 33128  
[Josterholt@miamidade.gov](mailto:Josterholt@miamidade.gov)

Henry N. Gillman  
Miami-Dade Assistant County Attorney  
Miami-Dade County Attorney's Office  
111 NW First Street Suite 2810  
Miami, Florida 33128

Richard Elliott, P.E., PMP  
Environmental Engineer  
Water Protection Division  
U.S. Environmental Protection Agency - Region 4  
61 Forsyth Street. S.W.  
Atlanta, GA 30303  
[Elliott.Richard@epa.gov](mailto:Elliott.Richard@epa.gov)

Paul Schwartz  
Associate Regional Counsel  
U.S. EPA, Region 4  
61 Forsyth Street, SW  
Atlanta, Georgia 30303  
[Schwartz.Paul@epa.gov](mailto:Schwartz.Paul@epa.gov)

William A. Weinischke  
Senior Trial Attorney  
Environmental Enforcement Section  
Environment and Natural Resources Division  
U.S. Department of Justice  
P.O. Box 7611  
Washington, D.C. 20044  
[Bill.Weinischke@usdoj.gov](mailto:Bill.Weinischke@usdoj.gov)



## Bhatt, Krishna

---

**From:** Sayre, Dennis  
**Sent:** Wednesday, March 18, 2020 2:35 PM  
**To:** Jeff.Ramos@msccruisesusa.com  
**Cc:** Shell, Karrie-Jo; Castillo, Jairo; Bragan, Mary Jo  
**Subject:** RE: Temporary Waiver from the VGP Incidental Discharge Requirements

Dear Mr. Ramos,

I am the VGP contact for inspections and compliance in EPA, Region 4. I am reviewing your request and consulting my managers and provide a response soon

Respectfully,  
Dennis

Dennis J. Sayre  
Drinking Water & Wastewater Section  
(404) 562-9756

---

**From:** Shell, Karrie-Jo <Shell.Karrie-Jo@epa.gov>  
**Sent:** Wednesday, March 18, 2020 2:03 PM  
**To:** Sayre, Dennis <Sayre.Dennis@epa.gov>  
**Subject:** FW: Temporary Waiver from the VGP Incidental Discharge Requirements

Can you please help this person. I'm not sure what to tell him.

Karrie-Jo Robinson-Shell, P.E.  
Environmental Engineer  
US EPA Region 4  
Water Protection Division  
61 Forsyth Street  
Atlanta, GA 30303  
(404) 562-9308

---

**From:** Ramos Jeff <[Jeff.Ramos@msccruisesusa.com](mailto:Jeff.Ramos@msccruisesusa.com)>  
**Sent:** Wednesday, March 18, 2020 1:56 PM  
**To:** Shell, Karrie-Jo <[Shell.Karrie-Jo@epa.gov](mailto:Shell.Karrie-Jo@epa.gov)>  
**Cc:** Myrtidis Minas <[Minas.myrtidis@msccm.co.uk](mailto:Minas.myrtidis@msccm.co.uk)>; Nicora Fabio <[fabio.nicora@msccm.co.uk](mailto:fabio.nicora@msccm.co.uk)>  
**Subject:** Temporary Waiver from the VGP Incidental Discharge Requirements

Dear Karrie-Jo,

Per our phone conversation, MSC Cruises has temporary suspended all our cruise ship operations in the U.S. until 30 April 2020 due to the COVID-19 situation.

We have anchored some of our ships offshore at the Miami Anchorage (within 3nm of shore), and additionally, we have some of our ships moored at PortMiami. Due to the port restrictions put on our ships by CBP, our ships will not be able to transit outside the port limits. Since we still have crew onboard, graywater mixed with blackwater are still being

generated and is accumulating in the ships' holding tanks. Two of our ships, the MSC SEASIDE and the MSC MERAVIGLIA, have Advanced Wastewater Processing Systems (AWPS) on board that treats the graywater and blackwater to IMO MEPC 227(64) standards.

The VGP requirements state that before ships can discharge graywater within 3nm of shore, initial monitoring must be done within the first 90 days of permit coverage. However, since our ships never had to discharge graywater within 3nm of shore, they have not conducted the required initial monitoring.

In order to ensure that our ships operate in good faith and in compliance with all environmental requirements, MSC Cruises is requesting EPA to grant a Temporary Waiver from the initial monitoring requirements for the MSC SEASIDE and the MSC MERAVIGLIA, and to allow these ships to discharge graywater treated by their AWPS, while in port or while at anchor in the Miami area.

Attached is an International Sewage Pollution Prevention Certificate for the MSC MERAVIGLIA and a Statement of Compliance for the MSC SEASIDE, which indicate that their AWPS meets IMO MEPC 227(64) standards.

If you have any questions or concerns, please feel free to contact me at the phone number below.

Thanks & Best regards,  
Jeff

**Jeff Ramos**

Senior Director, Safety, Security & Environment

MSC Cruises (USA) Inc.  
6750 North Andrews Ave, Suite 100  
Fort Lauderdale, FL 33309  
Mobile: +1 954.661.2207

# METROPOLITAN GOVERNMENT OF NASHVILLE AND DAVIDSON COUNTY



JOHN COOPER  
MAYOR

ROBERT E. COOPER, JR.  
DIRECTOR OF LAW

DEPARTMENT OF LAW  
METROPOLITAN COURTHOUSE, SUITE 108  
P.O. BOX 196300  
NASHVILLE, TENNESSEE 37219-6300  
(615) 862-6341 • (615) 862-6352 FAX

April 1, 2020

Chief, Environmental Enforcement  
Section  
Environmental and Natural Resources  
Division  
U.S. Department of Justice  
Post Office Box 7611  
Washington, D.C. 20044-7611

Director, Enforcement and Compliance  
Assurance Division  
U.S. Environmental Protection Agency  
Region 4  
Atlanta Federal Center  
61 Forsyth Street, S.W.  
Atlanta, Georgia 30303

United States Attorney  
Middle District of Tennessee  
110 Ninth Avenue, South, Suite A961  
Nashville, TN 37203

Wilson Buntin  
Assistant Attorney General  
Office of the Tennessee Attorney General  
Environmental Division  
P.O. Box 20207  
Nashville, TN 37202

Patrick Parker  
Assistant General Counsel  
Tennessee Department of Environment  
and Conservation  
312 Rosa Parks Avenue  
Nashville, TN 37243

re: DOJ Case No. 90-5-1-1-09000 (Nashville consent decree)  
**NOTICE OF FORCE MAJEURE EVENT**

Greetings:

As you are aware, on March 13, 2020, President Trump declared a national emergency arising from the COVID-19 epidemic. States of emergency also have been declared for Metropolitan Nashville and Davidson County and the State of Tennessee. Metro is now covered by both local and state executive orders (the "Orders") that call for the closure of non-essential businesses. Although predicting the full effect of the growing number of COVID-19 illnesses and business closures is not possible, it is clear that they will affect Metro's ability to comply with the terms of the referenced consent decree.

Metro's Water and Sewerage Services Department's wastewater treatment plants and collection systems have been and will continue to be kept fully operational. But in keeping with the Orders, most Metro employees, including Department employees not involved in water or sewer system operations, must work from home. This includes the Clean Water Nashville Program office, which oversees Consent Decree compliance. Most of the consulting engineering firms that Metro has engaged for work under the Consent Decree,

including the program, construction management, and project design firms, have also closed their offices and have employees working from home.

Although the Orders allow construction work to continue, they and the epidemic have disrupted the market for large projects by raising concerns about supply chain issues, equipment deliveries from highly impacted areas, and work force availability. The Orders also appear likely to lead to reductions in workplace efficiency by requiring workers to maintain social distancing. MWS was forced to delay bidding of the Central Headworks project for a minimum of five weeks. The Headworks project is a component of the Central WWTP Upgrade and CSO Reduction Project, the single largest project under the Consent Decree and a key element under the LTCP.

Based on these factors, please accept this as notice of the occurrence of a force majeure event, as defined in section XI of the Consent Decree. Further, because of that force majeure event, the Metropolitan Government requests consideration for potential extensions on compliance deadlines in the Consent Decree. At this point it is difficult to determine where and the extent to which extensions may be necessary, and Metro will provide additional information as it becomes available. Metro also will seek to minimize the impact of COVID-19 on its performance under the Consent Decree and will continue to expedite all associated projects to the extent practical.

Please let us know if you need any further information in support of this request. I would be happy to discuss any questions you may have at your convenience.

Best regards,



Thomas G. Cross  
Associate Director

pdf: Bob Cooper  
Scott Potter  
Cyrus Toosi  
Ron Taylor

## Melcher, John

---

**From:** Cheeta Soga <CSoga@nitscheng.com>  
**Sent:** Tuesday, March 24, 2020 11:25 AM  
**To:** Tedder, Newton  
**Cc:** Jennifer Johnson; Borci, Todd  
**Subject:** Re: MS4 requirements - covid-19 impacts

Hi Newton,

Thank you for getting back to us with some guidance. Please keep us posted on any new updates.

Take care,  
-Cheeta

---

**From:** Tedder, Newton <Tedder.Newton@epa.gov>  
**Sent:** Tuesday, March 24, 2020 10:43 AM  
**To:** Cheeta Soga <CSoga@nitscheng.com>  
**Cc:** Jennifer Johnson <jjohnson@nitscheng.com>; Borci, Todd <Borci.Todd@epa.gov>  
**Subject:** RE: MS4 requirements - covid-19 impacts

---

External Sender

---

Hi Cheeta

We are coordinating with enforcement and EPA HQ. For now, document what you are or are not able to complete and why. Plan to include that information in the annual report.

Stay safe

Newton Tedder  
617- 918-1038

---

**From:** Cheeta Soga <CSoga@nitscheng.com>  
**Sent:** Friday, March 20, 2020 12:24 AM  
**To:** Tedder, Newton <Tedder.Newton@epa.gov>  
**Cc:** Jennifer Johnson <jjohnson@nitscheng.com>  
**Subject:** MS4 requirements - covid-19 impacts

Hi Newton,

I hope you are staying safe amid the current covid-19 situation.

The current situation has already impacted a few of our Year 2 requirements. We had scheduled a public meeting for next Wednesday (3/25) that we since had to cancel. BSU, like many other universities in the area, has transitioned to online/remote learning through the rest of the spring semester and resident students are being asked to vacate their residence hall rooms beginning tomorrow. BSU was also in the process of advertising a late spring/summer internship

for dry weather sampling, and as a result of the situation, this effort may need to be put on hold. Are you aware of any discussions at EPA on whether certain deadlines to meet yearly requirements will be extended as a result of the rapidly changing covid-19 situation?

Could please provide any updates on EPA's current thinking?

Thank you in advance.

Stay safe,

-Cheeta

**Cheeta Soga, PE, LEED AP** | Consultant

*Pronouns: She, Her, Hers*

2 Center Plaza, Suite 430, Boston, MA 02108 | [www.nitscheng.com](http://www.nitscheng.com)

Main: 617-338-0063 | [csoga@nitscheng.com](mailto:csoga@nitscheng.com)

A Women-Owned Business Enterprise

***Celebrating 30 years of building better communities with you***

Boston, MA | Lawrence, MA | Worcester, MA | Washington, DC



This E-mail message and its attachments (if any) are intended only for the designated recipient(s). In addition, this message and the attachments (if any) may contain information that is proprietary, confidential, or privileged and exempt from disclosure or otherwise protected under applicable law. If you are not the designated recipient of this message, you may not read, disclose, reproduce, distribute, disseminate or otherwise use this transmission. Delivery of this message to any person other than the intended recipient is not intended to waive any right or privilege. If you have received this message in error, please promptly notify the sender or Nitsch Engineering, Inc. by reply E-mail and immediately delete this message from your system.



April 17, 2020

Via email ([eescasemanagement.enrd@usdoj.gov](mailto:eescasemanagement.enrd@usdoj.gov))

EES Case Management Unit  
Environment and Natural Resources Division  
U.S. Department of Justice  
P.O. Box 7611, Ben Franklin Station  
Washington, D.C. 20044

Via email ([addie.fiske@usdoj.gov](mailto:addie.fiske@usdoj.gov))

Senior Counsel  
Environmental Enforcement Section  
United States Department of Justice  
Williams Building  
408 Atlantic Ave, Suite 236  
Boston, MA 02110

Via email ([mckenna.douglas@epa.gov](mailto:mckenna.douglas@epa.gov))

Chief, Water Compliance Branch  
Division of Enforcement & Compliance Assistance  
U.S. EPA Region 2  
290 Broadway, 20<sup>th</sup> Floor  
New York, New York 10007

Via email ([feinmark.phyllis@epa.gov](mailto:feinmark.phyllis@epa.gov))

Chief, Water and General Law Branch  
Office of Regional Counsel  
U.S. EPA Region 2  
290 Broadway, 16<sup>th</sup> Floor  
New York, New York 10007

Via email ([pollins.mark@epa.gov](mailto:pollins.mark@epa.gov))

Director, Water Enforcement Division  
U.S. EPA OECA  
Mail Code 2243A  
Room 3102  
1200 Pennsylvania Ave., NW  
Washington, D.C. 20460

Re: Subsequent Notice of Claimed Force Majeure Event – Impact of COVID-19

Pursuant to Section VIII (Force Majeure) of the Consent Decree (Civil Action No. 2:17-cv-04346), NVR provided an “initial notice” of a claimed “force majeure event” on March 27, 2020,

11700 Plaza America Drive - Suite 500 - Reston, VA 20190 - Ph 703-956-4000



related to the COVID-19 pandemic (“COVID-19”). The initial notice indicated a likely impact on NVR’s operations in the Commonwealth of Pennsylvania and the possibility that COVID-19 could also impact NVR’s operations in other states.

While the 30 month term of the Consent Decree has concluded as of March 7, 2020, in the event that the obligations of the Consent Decree are later found to be applicable either by the Court or pursuant to any other agreement between the parties, this letter serves as the “subsequent written notice” pursuant to Section VIII of the Consent Decree.

As set forth in the initial notice, on March 19, 2020, the Governor of Pennsylvania announced that, due to COVID-19, all businesses in the state that are not “life-sustaining” must be shut down until further notice. This requirement covers residential building construction sites. NVR’s operations in the Commonwealth of Pennsylvania have acted, and will continue to act, in compliance with this requirement and all Sites will be shut down in accordance with the order.

Separately, on March 27, 2020, revised New York state guidance under the New York Governor’s Executive Order regarding COVID-19 required all non-essential construction in the state to shut down, including most residential building construction sites. NVR’s operations in the State of New York have acted, and will continue to act in compliance with this requirement and all Sites will be shut down in accordance with the order.

At this time, in accordance with exceptions to the state orders in both New York and Pennsylvania, NVR has been able to complete all necessary inspections and other operations in these states to maintain compliance with federal, state and local regulatory requirements, including the requirements of the Consent Decree.

We are continuing to monitor COVID-19. Any impact to our operations caused by future governmental actions or other COVID-19 related developments will be reported as a separate force majeure event.

Please let me know if you have any questions.

Sincerely,

*/s/ Michael Kotowski*

Michael Kotowski  
Vice President – Internal Audit and  
Corporate Governance

cc: Steven Solow (Baker Botts LLP)  
Anne Carpenter (Baker Botts LLP)  
Christopher Saporita (U.S. EPA Region 2)





March 27, 2020

Via email ([eescasemanagement.enrd@usdoj.gov](mailto:eescasemanagement.enrd@usdoj.gov))

EES Case Management Unit  
Environment and Natural Resources Division  
U.S. Department of Justice  
P.O. Box 7611, Ben Franklin Station  
Washington, D.C. 20044

Via email ([addie.fiske@usdoj.gov](mailto:addie.fiske@usdoj.gov))

Senior Counsel  
Environmental Enforcement Section  
United States Department of Justice  
Williams Building  
408 Atlantic Ave, Suite 236  
Boston, MA 02110

Via email ([mckenna.douglas@epa.gov](mailto:mckenna.douglas@epa.gov))

Chief, Water Compliance Branch  
Division of Enforcement & Compliance Assistance  
U.S. EPA Region 2  
290 Broadway, 20<sup>th</sup> Floor  
New York, New York 10007

Via email ([feinmark.phyllis@epa.gov](mailto:feinmark.phyllis@epa.gov))

Chief, Water and General Law Branch  
Office of Regional Counsel  
U.S. EPA Region 2  
290 Broadway, 16<sup>th</sup> Floor  
New York, New York 10007

Via email ([pollins.mark@epa.gov](mailto:pollins.mark@epa.gov))

Director, Water Enforcement Division  
U.S. EPA OECA  
Mail Code 2243A  
Room 3102  
1200 Pennsylvania Ave., NW  
Washington, D.C. 20460

Re: Initial Notice of Claimed Force Majeure Event – Impact of COVID-19

Section VIII (Force Majeure) of the Consent Decree (Civil Action No. 2:17-cv-04346) allows NVR to claim a force majeure event for “any event arising from causes beyond the control of

Builders, its contractors, or any entity controlled by Builder that prevents or delays the performance of any obligation of this Consent Decree despite all reasonable efforts by Builder to fulfill the obligation.” As of March 19, 2020, the Governor of Pennsylvania announced that, due to the COVID-19 pandemic (“COVID-19”), all businesses that are not “life-sustaining” must be shut down until further notice. This requirement covers residential building construction sites.<sup>1</sup> NVR’s operations in the Commonwealth of Pennsylvania will act in compliance with this requirement and all Sites will be shut down in accordance with the order. While the 30 month term of the Consent Decree has concluded, as of March 7, 2020, in the event that the obligations of the Consent Decree are later found to be applicable either by the Court or pursuant to any other agreement between the parties, NVR is providing “initial notice” of a claimed “force majeure event” related to COVID-19.

We expect COVID-19 may also impact NVR’s operations in other states, and may also require the closure of Sites in those states pursuant to: 1) state-specific requirements, or 2) the necessity to protect employee and public health and safety in accordance with federal recommendations, including the *Coronavirus Guidelines for America*, issued by the White House on March 16, 2020. See <https://www.whitehouse.gov/briefings-statements/coronavirus-guidelines-america/>.

To the extent possible pursuant to state-specific requirements and federal recommendations, NVR will continue site operations necessary to comply with federal state, or local requirements.

We are continuing to monitor COVID-19. While the 30 month term of the Consent Decree has concluded, as of March 7, 2020, in the event that the obligations of the Consent Decree are later found to be applicable either by the Court or pursuant to any other agreement between the parties, NVR will provide an update on its impact on operations as part of the required “subsequent notice” of the claimed “force majeure event” required by the Consent Decree.

Please let me know if you have any questions.

Sincerely,

/s/ *Michael Kotowski*

Michael Kotowski  
Vice President – Internal Audit and  
Corporate Governance

cc: Steven Solow (Baker Botts LLP)  
Anne Carpenter (Baker Botts LLP)  
Christopher Saporita (U.S. EPA Region 2)

---

<sup>1</sup> However, “[c]onstruction activities not clearly authorized under the DHS Guidance should suspend general operations, but may maintain specific limited operations necessary to ensure compliance with federal, state, or local regulatory requirements.” See <https://www.pa.gov/guides/responding-to-covid-19/#ForBusinesses>.

**From:** [Velez, Julian](#)  
**To:** [tim.thomas2@tetrattech.com](mailto:tim.thomas2@tetrattech.com)  
**Cc:** [Buettner, Robert](#); [LaVigna, Gaetano](#); [Patel, Harish](#)  
**Subject:** RE: New York State Asbestos Handling Certificate Expiration Dates  
**Date:** Thursday, April 30, 2020 2:15:00 PM

---

Mr. Thomas,

Thank you for your inquiry regarding individuals with expired or expiring asbestos handling certificates and the potential enforcement consequences if they continue to work during the COVID-19 public health emergency. We have shared EPA's interim COVID-19 enforcement guidance with the New York State Department of Labor (NYSDOL) and discussed this matter. We believe that our guidances on this are consistent.

Specifically, please note the following from *EPA's COVID-19 Implications for Enforcement and Compliance Assurance Memo*:

"Many training classes are offered on-line and such on-line training generally should not be affected by travel and social distancing constraints. If practicable, sectors mandated to function with certified operators should maintain normal certification and training practices. If not practicable due to the COVID-19 pandemic, the EPA believes that it is more important to keep experienced, trained operators on the job, even if a training or certification is missed."

Please let me know if you have additional questions on this matter.

Thank you,

Julian D. Velez  
U.S. EPA – Region 2  
Air Compliance Branch  
290 Broadway, 21<sup>st</sup> Floor  
New York, NY 10007  
(212) 637-3464

***CONFIDENTIAL: This transmission may contain deliberative and/or enforcement confidential, attorney-client, or otherwise privileged material. Do not release under FOIA without appropriate review. If you have received this message in error, you are asked to notify the sender and to delete this message.***

---

**From:** Thomas, Tim1 <[Tim.Thomas2@tetrattech.com](mailto:Tim.Thomas2@tetrattech.com)>  
**Sent:** Thursday, April 23, 2020 11:07 AM  
**To:** Iglesias, Ariel <[Iglesias.Ariel@epa.gov](mailto:Iglesias.Ariel@epa.gov)>

**Subject:** New York State Asbestos Handling Certificate Expiration Dates

Hello Mr. Iglesias,

I hope you are well during this unique time. I write you today as the President of the Professional Abatement Contractors of NY (PACNY) on behalf of all of the certified abatement handlers, supervisors, inspectors, monitors, etc. seeking guidance regarding recertification during the current 'pause' we are experiencing in NY due to COVID-19 work restrictions.

Currently, as you are most likely aware, most training for refresher courses in NY cannot be performed at this time as all training providers have been ordered to shut down during the pause. This poses a problem for individuals who have asbestos handling certificates that are expiring in the next month, or two, or which have already expired within the past ~6 weeks.

New York State Department of Labor has provided guidance that during this time individuals with expired or expiring certificates can continue to work without the risk of a violation. This is found on their website at <https://labor.ny.gov/workerprotection/safetyhealth/temporary-rules-licenses-certifications-exams.shtm>. I have included the pertinent text for your convenience.

### ***Application to Renew Your Asbestos Handling Certificate***

*Any person certified to engage in Asbestos Handling whose certification hard card expired December 31, 2019 or later and who is unable to renew their certification due to the cancellation of a refresher course resulting from the ongoing Covid-19 crisis may continue to work using their existing cards until courses resume. Check this notice periodically for updated information about your Certificate's validity.*

***Any questions not answered on this page will be answered by staff at the License & Certificate Unit. Call (518) 457-2735 or email [License&certificate@labor.ny.gov](mailto:License&certificate@labor.ny.gov).***

I feel that this consideration by NYSDOL is both appropriate and reassuring to individuals affected by the current pause. At this time, I am seeking confirmation from USEPA that the same, or similar considerations will be allowed for individuals with expired or expiring certificates, and that there will be no unfortunate consequences for these individuals once the pause ends or is phased out, whenever that may be.

As an organization who has a vast network of industry leaders and an existing mechanism to distribute information to the industry in a quick and effective manner, I also would like to extend the opportunity for USEPA to share any additional guidance regarding asbestos abatement and the impacts of COVID 19, or any future matter.

Thank you for your time and consideration in this matter.

Tim Thomas  
President  
PACNY  
[www.pacny.org](http://www.pacny.org)

**From:** [Perez, Rudolph](#)  
**To:** [Barbagallo, Lydia](#)  
**Cc:** [Simon, Paul](#); [Ellis, Demian](#)  
**Subject:** FW: Quarterly Report / Panther Siding & Window, Inc / Docket No. TSCA-02-2019-9267  
**Date:** Wednesday, May 6, 2020 11:17:38 AM

---

Hi Lydia, I hope all is well. As per Paul Simon's e-mail "to gather info about use of enforcement discretion due to COVID-19" below is an e-mail (4-15-20) from Kevin Tierney, Esq. on behalf of Panther Siding & Windows asking for an extension to submit quarterly reports to EPA as mandated by a CA/FO. EPA's response via e-mail granting an extension is also below. Let me know if you need anything else. Thank you.

Rudy

---

**From:** Ellis, Demian <[Ellis.Demian@epa.gov](mailto:Ellis.Demian@epa.gov)>  
**Sent:** Thursday, April 23, 2020 1:17 PM  
**To:** Kevin Tierney <[kmt@berensonllp.com](mailto:kmt@berensonllp.com)>  
**Cc:** Perez, Rudolph <[Perez.Rudolph@epa.gov](mailto:Perez.Rudolph@epa.gov)>; Kim Flynn <[kkf@berensonllp.com](mailto:kkf@berensonllp.com)>  
**Subject:** RE: Quarterly Report / Panther Siding & Window, Inc / Docket No. TSCA-02-2019-9267

Good afternoon Kevin,

Under the circumstances, we will grant your client an extension on submitting their final quarterly report until June 29, 2020. Should additional time be required beyond that date, feel free to contact me to discuss. Thank you.

Regards,

***Demian P. Ellis***  
***USEPA Region 2***  
***Acting Chief, Toxics Compliance Section***  
***Pesticides & Toxic Substances Compliance Branch***  
***Enforcement & Compliance Assurance Division***  
***2890 Woodbridge Avenue (MS-225)***  
***Edison, New Jersey 08837-3679***

---

**From:** Kevin Tierney <[kmt@berensonllp.com](mailto:kmt@berensonllp.com)>  
**Sent:** Wednesday, April 15, 2020 12:18 PM  
**To:** Ellis, Demian <[Ellis.Demian@epa.gov](mailto:Ellis.Demian@epa.gov)>  
**Cc:** Perez, Rudolph <[Perez.Rudolph@epa.gov](mailto:Perez.Rudolph@epa.gov)>; Kim Flynn <[kkf@berensonllp.com](mailto:kkf@berensonllp.com)>  
**Subject:** Re: Quarterly Report / Panther Siding & Window, Inc / Docket No. TSCA-02-2019-9267

Gentlemen,

Given Governor Cuomo's shutdown order in the state of New York, Panther has shuttered its in-person operation, which makes preparing the upcoming quarterly report difficult; borderline impossible. I trust EPA is agreeable to an extension of time to file? Perhaps 15 days after the Governor rescinds or modifies his Order that would then allow Panther to go in and compile the report. Let me know your thoughts.

**Kevin M. Tierney** Partner, Berenson LLP



Phone: [703.750.1055](tel:703.750.1055)

Email: [kmt@berensonLLP.com](mailto:kmt@berensonLLP.com)

Website: [BerensonLLP.com](http://BerensonLLP.com)

Address: 4495 Military Trail, Suite 203 Jupiter, FL 33458

---



# Peabody Municipal Light Plant

---

**Community Owned. Not for profit. It's Ours.**

May 1, 2020

Mr. Edward Braczyk  
Permit Chief  
MassDEP Northeast Regional Office  
205B Lowell Street  
Wilmington, MA 01887

Dear Mr. Braczyk:

This notification serves to provide an update to the MassDEP and USEPA Region I that Low Mass Emitter (LME) NO<sub>x</sub> Emission Rate testing for Units #1 and #2 at the Waters River Station (ORIS Code 1678) in Peabody, MA will be postponed due to the ongoing COVID-19 pandemic. Prior communication dated March 5, 2020 indicated that this testing was scheduled for the week of May 3, 2020.

Waters River Station intends to perform Low Mass Emitter (LME) NO<sub>x</sub> Emission Rate testing prior to October 1, 2020, still within applicable regulatory deadlines. A follow-up notification will be provided when a proposed schedule is available.

This testing is being performed to re-establish fuel-and-unit-specific NO<sub>x</sub> Emissions Rates for these units in accordance with 40 CFR 75.19(c)(1)(iv). This Test Program is also being conducted to satisfy annual NO<sub>x</sub>/CO RACT Testing requirements for these units under Massachusetts 310 CMR 7.19(13)(a).

If you have any questions or concerns, please contact me by phone at (978) 573-1240 or email at [dguitard@pmlp.com](mailto:dguitard@pmlp.com)

Sincerely,

Dan Guitard  
Environmental Coordinator  
(978) 573-1240

Cc: Joseph Su, DEP



May 6, 2020

Eduardo González, PE, DEE. MBA  
Environmental Engineer  
Caribbean Environmental Protection Division  
U.S. Environmental Protection Agency - Region 2  
City View Plaza II – Suite 7000  
#48 Road. 165 Km. 1.2  
Guaynabo, Puerto Rico 00968-8073

**Subject: Consent Decree Case 3:10-cv-01631 - Force Majeure**

Dear Mr. González:

As you know, the COVID-19 pandemic has modified the way of life of all world citizens. As the spread of the disease progresses, further precautionary measures to mitigate the propagation of this terrible pandemic are being set forth by government agencies. The Government of Puerto Rico is not an exception. Pursuant to Executive Orders OE-2020-020, OE-2020-023, OE-2020-033 and OE-2020-038, the Governor of Puerto Rico, Honorable Wanda Vázquez Garced established lockdown orders throughout all public service, including the operations of the Puerto Rico Metropolitan Bus Authority (PRMBA). On March 15, 2020, José L. Rodríguez Macias, Esq., PRMBA Director of Environmental Quality and Industrial Security, verbally communicated, via telephone conversation with the EPA, the closure of all operations within the PRMBA.

Section VIII 5.1, of the Order and Consent Decree (CD) between the Environmental Protection Agency (MBA) and PRMBA defines Force Majeure as “*any event arising from causes beyond the control of MBA, of any entity controlled by MBA, or of MBA contractors, that delays or prevents the performance of any obligation under this Consent Decree despite MBA's best efforts to fulfill the obligation*”. Except for twelve (12) vehicles of our paratransit (*Llame y Viaje*) fleet that are being used to service dialysis patients, all other business of the PRMBA is hereby suspended until further notice, including repair and maintenance duties.

Currently, the COVID-19 pandemic precludes the Puerto Rico Metropolitan Bus Authority from fully performing its duties, as dictated within our agreement. We hereby, respectfully, request the suspension of all obligations within the **Consent Decree, Case 3:10-cv-01631** and exercise our right of Force Majeure, as set forth by Section VIII 5.2.

Electronic copy of this request will be forwarded to [gonzalez.eduardo@epa.gov](mailto:gonzalez.eduardo@epa.gov), and hard copy of this document will be sent to the following address:

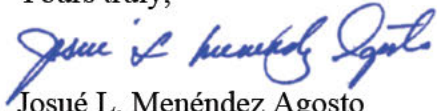




Carmen R. Guerrero Pérez, Director  
Caribbean Environmental Protection Division  
U.S. Environmental Protection Agency - Region 2  
City View Plaza II – Suite 7000  
#48 Road. 165 Km. 1.2  
Guaynabo, Puerto Rico 00968-8073

To further reinforce our obligations and compromise, once operations within our company normalize, immediate notification of the renewal of business will be given to the EPA. Should you have any inquiries regarding this or any other matter, feel free to contact me at your earliest convenience.

Yours truly,



Josué L. Menéndez Agosto  
President and General Manager  
Puerto Rico Metropolitan Bus Authority





# GOBIERNO DE PUERTO RICO

## Autoridad de Acueductos y Alcantarillados

**Transmitted by Electronic Mail**

March 16, 2020

Ms. Carmen Guerrero, Director  
Caribbean Environmental Protection Division  
U.S. Environmental Protection Agency  
City View Plaza – Suite 7000  
#48 Road 165 Km 1.2  
Guaynabo, PR 00968-8069

Ms. Concepción Quiñones de Longo, Interim Secretary  
Department of Health  
PO Box 70184  
San Juan, PR 00936

Mr. Ángel R. Meléndez Aguilar, Director  
Water Quality Area  
Puerto Rico Department of Natural and Environmental Resources  
P.O. Box 11488  
San Juan, PR 00910

### ***Force Majeure***

ELA v. AAA, Civil KPE 2006-0858 (904)  
United States v. PRASA, Civil 3:15-cv-02283

Dear Ms. Guerrero, Dra. Quiñones, and Mr. Meléndez:

The Governor of Puerto Rico decreed an emergency order on March 12, 2020, amid the threat of the coronavirus or COVID-19 global pandemic to minimize the potential of infection and transmission of this viral threat. The Governor of Puerto Rico also declared via Executive Order the immediate implementation on March 15, 2020, of a curfew across Puerto Rico under the authority conferred by Sections 5 and 6 of Art. VI of the Constitution of Puerto Rico, by Art. 1 of Act No. 81, and by Act No. 20-2017 with the purpose of protecting public health. The emergency that Puerto Rico and the rest of the world is undergoing with the spread of COVID-19 could potentially affect PRASA facility operations, as well as ongoing projects and work activity.



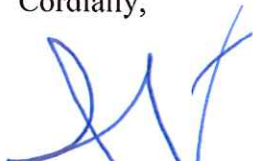
**Cumplimiento y Control de Calidad:** #604 Avenida Barbosa, Hato Rey - PO Box 7066, San Juan, PR 00916-7066

To mitigate the possible effects, PRASA's Emergency Response Plan (ERP) has been activated to protect the public, personnel, and property. Notwithstanding the implementation of the ERP, the effects of the COVID-19 public health emergency may affect PRASA's ability to respond promptly and efficiently to circumstances that may involve non-compliance concerns at PRASA facilities, projects, and activities.

The foregoing serves to provide the required notification of a *force majeure* event. If the event delays performance or causes non-compliance of any obligations set forth in any consent decree, administrative order, or inspection report among others, PRASA will submit a report with an explanation and description of the reasons for such non-compliance.

If you have any questions regarding the matter herein addressed, please contact us at your convenience at (787) 620-2277, extension 2131.

Cordially,



Irma M. López Santos  
Executive Director  
Environmental Compliance, Health and Safety

c Eng. Doriel Pagán, Raquel Matos, Jaime Géliga, José J. Rivera, Luis González, Cherryl Ortiz McCormick, Roberto Martínez, Enrique Rosario, Joel Lugo, José Rivera Ortiz, Wilther Avilés, Pedro Pérez, Augusto Carmona, María Crespo, Julio Correa, Lisby Pagán, Juan C. Pérez, Jorge Marrero, ELA v. AAA, Civil KPE 2006-0858 (904), United States v. PRASA, Civil KPE 3:15-cv-02883, General File, Force Majeure File, Reader File





# GOBIERNO DE PUERTO RICO

Autoridad de Acueductos y Alcantarillados

April 15, 2020

**Carmen Guerrero**

Director, Caribbean Environmental Protection Agency  
U.S. Environmental Protection Agency  
City View Plaza II Suite 7000  
#48, State Road No. 165, Km 1.2  
Guaynabo, PR 00968-8069

**Erick Schaaf**

Chief, Water and General Law Branch  
Office of Regional Counsel  
U.S. Environmental Protection Agency Region II  
290 Broadway, 16<sup>th</sup> Fl.  
New York, NY 10007

**Thomas A. Mariani**

Chief, Environmental Enforcement Section  
Environment & Natural Resources Division  
U.S. Department of Justice  
P.O. Box 7611, Ben Franklin Station  
Washington, D.C. 20044-7611

**Force Majeure – COVID-19 Compliance Situation Report  
Request for Due Date Extension – Biannual Progress Report No. 9  
United States of America v. Puerto Rico Aqueduct and Sewer Authority  
Consent Decree - Case 3:15-cv-02283**

The Puerto Rico Aqueduct and Sewer Authority (PRASA) delivered electronically a notification letter on March 16, 2020 to the U.S. Environmental Protection Agency, Puerto Rico Department of Health and Puerto Rico Department of Natural and Environmental Resources invoking a Force Majeure Event as a result of the COVID-19 public health emergency and its implications on PRASA's ability to meet obligations set forth in any consent decree, administrative order, or inspection report among others. Also, stated was that if a delay or noncompliance arises concerning the performance of an obligation under any consent decree, administrative order, or inspection report among others, a report would be submitted explaining and describing such delay or noncompliance.



**Cumplimiento y Control de Calidad:** #604 Avenida Barbosa, Hato Rey - PO Box 7066, San Juan, PR 00916-7066



In fulfillment of said statement, PRASA reports that pursuant to Section XXV of the Consent Decree (CD) referenced in the subject matter of this report, PRASA shall submit to EPA a written report on a biannual basis detailing the current status and/or progress of the actions taken in compliance with the CD. The information to be submitted is considerable and needs to be gathered and reviewed by and for all PRASA regions to assure the report responsibly addresses and includes the matters and details required by the CD.

As a result of the evolving COVID-19 pandemic and measures taken by the Government of Puerto Rico and PRASA to safeguard the health and safety of the public, including staff and personnel, PRASA is requesting an extension of time up to November 1, 2020 to submit Biannual Progress Report No. 09, due by May 1, 2020 and covering the period from September 1, 2019 to February 29, 2020, for the reasons detailed below.

## **BACKGROUND**

The Governor of Puerto Rico, on March 12, 2020 declared a state of emergency throughout the island as a result of the vile threat of the COVID-19 global pandemic and issued on March 15, 2020 Executive Order OE-2020-023 ("Executive Order") with the objective to minimize the chances of direct and indirect transmission of the virus from one person to another and the rapid spread of the virus in Puerto Rico. By means of the Executive Order, mindful of the need to protect the safety and health of the public, the Governor mandated for immediate implementation of measures such as, curfew, personal/social isolation, and quarantine, among other measures, until March 30, 2020. On March 26, 2020 and April 12, 2020, the Governor announced amendments to the Executive Order to extend its application until May 3, 2020 and apply stricter measures. In this sense, the people of Puerto Rico remain quarantined, and under social isolation and stay home orders, curfew, up to May 3, 2020. In addition, the closure of governmental operations, except those related to essential services, as well as the closure of businesses and commercial enterprises, except for the exceptions detailed, are required by the Executive Order.

## **REASONS WHY EXTENSION REQUESTED IS ATTRIBUTABLE TO COVID-19 IMPLICATIONS**

The emergency that Puerto Rico experiences due to COVID-19 has resulted in worker shortages, as well as the curfew, travel and social distancing restrictions, amongst others, imposed to limit the spread of COVID-19. The island wide restrictions imposed affect PRASA's daily and routine operations, ongoing projects, work activities and therefore, the ability to timely fulfill all reporting obligations and milestones under the Consent Decree due limited availability of personnel. Which in turn too, impedes PRASA's ability to gather, compile and analyze the information required for Bi-annual Progress Report No. 9 and impairs the compiling of information for the subsequent report that covers March 1, 2020 to August 31, 2020, due by November 1, 2020. Notwithstanding, PRASA continues exerting its best efforts, including outsourcing services, to achieve its sampling, monitoring and reporting obligations and milestones, while also taking measures to prevent the potential of infection and transmission of COVID-19 between employees.



# GOBIERNO DE PUERTO RICO

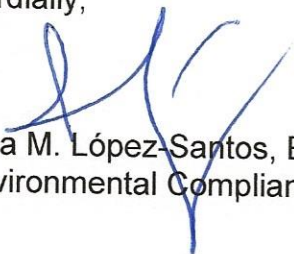
## Autoridad de Acueductos y Alcantarillados

Despite the novel situation, as a vital contribution to combat and contain COVID-19, PRASA works hard to ensure that potable water and wastewater services are fully operational and operational personnel provide safe supply of water to homes and hospitals throughout Puerto Rico, including its islands Culebra and Vieques.

For the reason mentioned above, PRASA requests an extension until November 1, 2020 to submit jointly Bi-annual Progress Reports No. 9 and 10.

For additional information, do not hesitate to contact us at (787) 620-2277 extension 2131.

Cordially,

  
Irma M. López-Santos, Executive Director  
Environmental Compliance, Health and Occupational Safety

C: CD 3:15-cv-02283 (JAG)-Reader File  
eC: Jaime Géliga, Doriel Pagán, Juan Pérez, Raquel Matos, Jorge Marrero



**Cumplimiento y Control de Calidad:** #604 Avenida Barbosa, Hato Rey - PO Box 7066, San Juan, PR 00916-7066



## Melcher, John

---

**Subject:** FW: Republic 114 Reporting Requirement

---

**From:** Olivier, Tom <[olivier.tom@epa.gov](mailto:olivier.tom@epa.gov)>  
**Sent:** Friday, March 27, 2020 2:22 PM  
**To:** Thomas A. Mackie <[tmackie@mackieshea.com](mailto:tmackie@mackieshea.com)>  
**Cc:** Sansevero, Christine <[Sansevero.Christine@epa.gov](mailto:Sansevero.Christine@epa.gov)>; Mohamoud, Abdi <[mohamoud.abdi@epa.gov](mailto:mohamoud.abdi@epa.gov)>  
**Subject:** RE: Republic 114 Reporting Requirement

Tom: thank you for the update and the notice concerning the need for more time to respond to the 114 information request. EPA will grant the additional time. The response is now due by May 6, 2020, as you request.

I certainly understand how COVID-19 might impede Republic's efforts and timeline for the response. For our records, I do ask that you write to provide some more detail on how the emergency is affecting the response work in this matter.

Thank you, best wishes -

Tom

---

**From:** Thomas A. Mackie <[tmackie@mackieshea.com](mailto:tmackie@mackieshea.com)>  
**Sent:** Friday, March 27, 2020 11:40 AM  
**To:** Olivier, Tom <[olivier.tom@epa.gov](mailto:olivier.tom@epa.gov)>  
**Cc:** Sansevero, Christine <[Sansevero.Christine@epa.gov](mailto:Sansevero.Christine@epa.gov)>; Mohamoud, Abdi <[mohamoud.abdi@epa.gov](mailto:mohamoud.abdi@epa.gov)>; Peter F. Durning <[pdurning@mackieshea.com](mailto:pdurning@mackieshea.com)>  
**Subject:** RE: Republic 114 Reporting Requirement  
**Importance:** High

Tom:

Republic has made significant progress compiling the information requested, but given the COVID-19 State of Emergency, will not be prepared to submit its response by April 6 and requests an extension to May 6<sup>th</sup>. I am happy to discuss with you by phone if need be. You can reach me at the direct dial or cell numbers below.

Please acknowledge whether or not the EPA agrees to the requested extension by reply email.

Thanks and I hope you and yours are all well.

Tom

---

### Note our New Firm Name, Boston Mailing Address and Email Addresses

Thomas A. Mackie, Esq.  
MACKIE SHEA DURNING, PC  
33 Bradford Street  
Concord, Massachusetts 01742  
Phone: (617) 266-5700  
Direct Dial: (617) 266-6288

Cell: (617) 840-3606  
Fax: (617) 266-5237  
[tmackie@mackieshea.com](mailto:tmackie@mackieshea.com)  
[www.mackieshea.com](http://www.mackieshea.com)

**[Follow Mackie Shea Durning on LinkedIn!](#)**

**Boston Office:**

20 Park Plaza, Suite 1001  
Boston, Massachusetts 02116

---

**From:** Olivier, Tom <[olivier.tom@epa.gov](mailto:olivier.tom@epa.gov)>  
**Sent:** Wednesday, February 12, 2020 9:08 AM  
**To:** Thomas A. Mackie <[tmackie@mackieshea.com](mailto:tmackie@mackieshea.com)>  
**Cc:** Sansevero, Christine <[Sansevero.Christine@epa.gov](mailto:Sansevero.Christine@epa.gov)>; Mohamoud, Abdi <[mohamoud.abdi@epa.gov](mailto:mohamoud.abdi@epa.gov)>  
**Subject:** Republic 114 Reporting Requirement

Tom: the green card notes February 6 as the date of receipt. EPA agrees to a 30 day extension for the response, to April 6, 2020.

As discussed, Republic (or its subsidiaries operating in Massachusetts) will provide responses relating to four active transfer facilities. At this time Devens Recycling Corp., acquired January 30, 2020, does not need to be included in the responses. EPA may renew its request for information from that facility after reviewing the other responsive material.

Thank you,

Tom Olivier  
Senior Enforcement Counsel

This e-mail message and any attachments hereto is generated from the law firm of Mackie Shea Durning, PC and contains information that is confidential and may be privileged as an attorney/client communication or as attorney work product. This is a private communication intended to be disclosed solely to the addressee(s). If you are not the intended recipient, be aware that any disclosure, copying, distribution or use of the contents of this e-mail information is prohibited. If you have received this e-mail in error, please notify the sender by return e-mail and delete it from your computer system. Thank you for your cooperation. For more information about Mackie Shea Durning, PC, please visit our web site at [www.mackieshea.com](http://www.mackieshea.com).



# MANKO | GOLD | KATCHER | FOX LLP

AN ENVIRONMENTAL AND ENERGY LAW PRACTICE

Jonathan H. Spergel  
484-430-2309  
jspergel@mankogold.com

*Admitted in PA and NJ*

401 CITY AVENUE, SUITE 901  
BALA CYNWYD, PA 19004  
TEL: 484-430-5700  
FAX: 484-430-5711  
WWW.MANKOGOLD.COM

May 20, 2020

A LIMITED LIABILITY PARTNERSHIP  
FORMED IN PENNSYLVANIA

Via Electronic Mail

Lauren Fischer  
Assistant Regional Counsel  
U.S. Environmental Protection Agency Region 2  
290 Broadway, 16th Floor  
New York, New York 10007-1866

*Partner responsible:*  
*John F. Gullace (NJ)*  
*Brenda H. Gotanda (HI)*



Re: Riverton Project, Sayreville, New Jersey – CA/FO Request for Payment Schedule

Dear Lauren:

By way of this letter, Sayreville Seaport Associates Urban Renewal, L. P. (“SSA”) requests that the U.S. Environmental Protection Agency (“EPA”) agree to a five-month payment plan to pay the \$200,000 civil penalty pursuant to the final Consent Agreement and Final Order (“CA/FO”) to be executed between EPA and SSA. Specifically, SSA proposes that the \$200,000 civil penalty be satisfied through a payment of \$40,000 per month for a five (5) month period, commencing thirty (30) days after the Effective Date of the CA/FO.

The reason for this request for a payment plan is to allow SSA to more effectively manage cash flow associated with ongoing site remedial activities at the Riverton Project site. In light of the worldwide COVID-19 pandemic that has had significant economic impact throughout the U.S. economy, SSA believe that it is critical to conservatively manage cash flow to ensure that SSA can continue to satisfy all of its remedial and permitting obligations at the site in a timely fashion, and the requested payment plan will meaningfully assist SSA in these efforts. Once SSA and EPA reach agreement concerning the terms of the requested payment plan, SSA will be in a position to immediately execute the CA/FO.



May 20, 2020

Page 2

Thank you for all of your assistance in this regard, and please feel free to contact me should you have any questions.

Sincerely,

A handwritten signature in black ink, appearing to read "Jon Spergel", written over the printed name.

Jonathan H. Spergel  
For MANKO, GOLD, KATCHER & FOX, LLP

JHS/pa

## Bhatt, Krishna

---

**From:** Fischer, Lauren  
**Sent:** Friday, May 22, 2020 10:08 AM  
**To:** Barbagallo, Lydia  
**Cc:** Feinmark, Phyllis  
**Subject:** FW: Executed AOC and Approved CAFO for SSA's Signature - Sayreville Seaport Associates Urban Renewal, L.P.  
**Attachments:** SSA Penalty CAFO 5-21-20.pdf

Hi Lydia-

We approved the request for a payment plan to SSA. We didn't really formally respond but revised the CAFO to reflect the request. Attached is a copy of the CAFO for your records.

Thanks! Lauren

---

**From:** Fischer, Lauren  
**Sent:** Thursday, May 21, 2020 2:55 PM  
**To:** Jonathan Spergel <[JSpergel@mankogold.com](mailto:JSpergel@mankogold.com)>  
**Cc:** Green, Katherine <[Green.Katherine@epa.gov](mailto:Green.Katherine@epa.gov)>; Ramirez, Debra <[Ramirez.Debra@epa.gov](mailto:Ramirez.Debra@epa.gov)>; Modigliani, Justine <[Modigliani.Justine@epa.gov](mailto:Modigliani.Justine@epa.gov)>; Feinmark, Phyllis <[Feinmark.Phyllis@epa.gov](mailto:Feinmark.Phyllis@epa.gov)>  
**Subject:** Executed AOC and Approved CAFO for SSA's Signature - Sayreville Seaport Associates Urban Renewal, L.P.

Attached, please find a fully executed AOC. Please ensure your that client knows that its obligations to perform under this AOC are now in effect.

I am pleased to report that we have received approval to waive interest on the requested payment plan. Attached, please find a revised CAFO that incorporates the requested payment schedule. Please have your client sign page 8 of the CAFO. Please email me a scanned copy of the signed page. Once received, EPA will then sign and execute the CAFO. We will then transmit to you a copy of the fully executed agreement. As a reminder, payment obligations are not triggered until the effective date of the CAFO. The CAFO is also subject to a new 30-day public comment period. We will not issue a final order for the CAFO until 10-days after the close of the public comment period.

If you have any questions, please do not hesitate to contact me. Thank you for your cooperation in amicably resolving this matter.

Lauren Fischer  
Assistant Regional Counsel  
U.S. Environmental Protection Agency Region 2  
290 Broadway, 16th Floor  
New York, New York 10007-1866  
Tel: (212) 637-3231  
Fax: (212) 637-3202

---

**From:** Jonathan Spergel <[JSpergel@mankogold.com](mailto:JSpergel@mankogold.com)>  
**Sent:** Wednesday, May 20, 2020 10:53 AM  
**To:** Fischer, Lauren <[Fischer.Lauren@epa.gov](mailto:Fischer.Lauren@epa.gov)>  
**Subject:** SSA - Executed AOC  
**Importance:** High

Lauren, my apologies on the delay in getting the AOC signed by my client, but attached is a copy of the AOC executed by SSA. Also attached is a letter requesting a payment schedule for the penalty under the CA/FO. Please let me know if you have any questions at all. Thank you.

Jonathan

**Jonathan Spergel, Esquire**

**MANKO | GOLD | KATCHER | FOX LLP**

*An environmental, energy, litigation, safety and land use law practice*

401 City Avenue, Suite 901 | Bala Cynwyd, PA 19004

(w) 484.430.2309 | (c) 610.745.2868 | (f) 484.430.5711

[jspergel@mankogold.com](mailto:jspergel@mankogold.com) | [www.mankogold.com](http://www.mankogold.com)



The information contained in this e-mail message is intended only for the personal and confidential use of the intended recipient(s). This message may be an attorney-client communication or other confidential information and as such is privileged and confidential. If the reader of this message is not the intended recipient or an agent responsible for delivering it to the intended recipient, you are hereby notified that you have received this communication in error and that any review, dissemination, distribution, or copying of this message is strictly prohibited. If you have received this communication in error, please notify us immediately by e-mail, and delete the original message.



SUEZ Water Environmental Services Inc.  
Springfield Wastewater Department  
190 M Street Extension  
Agawam, MA 01001  
Tel: 413-732-6501  
Fax: 413-732-7071  
WWW.SUEZ.COM

April 1, 2020

NPDES Permit MA0103331

Michael Cobb  
USEPA- Region 1  
5 Post Office Square  
Boston, MA 02109-3912

RE: Springfield CSO Inspections- Frequency modification

Dear USEPA,

As part of SUEZ's continuity of operations plan for the ongoing COVID-19 pandemic and to reduce potential for employee exposure, we have implemented a split crew 12-hour shift schedule for our essential operations and maintenance employees at the Springfield Regional Wastewater Treatment Facility. Under this schedule the employees are divided into two separate crews that do not work together at the same time. Presently we have two O&M staff members on self-quarantine and anticipate that additional staff may be unavailable in the coming weeks as the incidences of COVID-19 peak. The Springfield facility is also in the process of hiring operators to fill two vacancies but that process has slowed and may be delayed indefinitely due to COVID-19 related issues.

To reduce out-of-plant travel and associated potential employee exposure to the coronavirus and to concentrate available staff resources on priority work at the wastewater facility, we are requesting that required on-site CSO structure monitoring frequency be reduced from two times per week to monthly. This would remain in effect until the COVID-19 pandemic state of emergency is lifted. Monitoring of the Springfield CSOs will be continued throughout this time via the real time remote CSO monitoring, alarming and reporting system. This system provides continuous supervision of the CSO Regulators that is equivalent to if not superior to the twice per week physical inspections.

Specifically, and in accordance with NPDES Permit MA0103331, issued to the Springfield Water and Sewer Commission (SWSC) for the Springfield Regional Wastewater Treatment Facility, SUEZ Water Environmental Services Inc., on behalf of the SWSC, is hereby requesting a waiver from the twice per week CSO monitoring Frequency provision under Part 1.A.2.a, Paragraph 1 of the permit as stated below and request consideration of and approval for on-site CSO inspection frequency to be reduced to once per month:

*"Each CSO structure/regulator, pumping station, and/or flood-gate shall be routinely inspected, at a minimum of twice per week, to insure that they are in good working condition and adjusted to minimize combined sewer discharges (NMC #1, 2, and 4)."*

As per Part 1.A.2.a, Paragraph 4,

*“Any request(s) for the granting of a reduction(s) in the required inspection frequency of any CSO structure/regulator, pumping station, and/or flood-gate may be considered following approval of the revised CSO monitoring plan required in Part I.A.2.d. of this permit.”*

Thank you for consideration of this request and if you should have any questions, please contact us at (413) 732-6501.

Best Regards,



Matthew LaPointe  
Project Manager

Cc: William Fuqua, SWSC  
Denny Dart, USEPA  
Matthew Sokop, MADEP  
File

**Melcher, John**

---

**From:** Koopman, Douglas  
**Sent:** Monday, April 06, 2020 9:09 AM  
**To:** Lapointe, Matthew  
**Cc:** Susannah.king@state.ma.us; Langley, Lealdon (DEP); Sokop, Matthew (DEP)  
**Subject:** response to Springfield water and sewer commission's letter dated April 1 2020 request for reduced CSO inspections

Dear Mr. Lapointe

Thank for your letter requesting guidance with respect to certain monitoring requirements under the Springfield Water and Sewer Commission's (SWSC's) NPDES permit.

In response to noncompliance related to the COVID-19 pandemic, Assistant EPA Administrator for Enforcement and Compliance Assurance Susan Parker Bodine has issued a temporary policy announcing the exercise of enforcement discretion for certain environmental obligations. That memo, accessible at the link below, establishes specific conditions to be met, if you are unable to meet those obligations identified in your NPDES permit.

<https://www.epa.gov/sites/production/files/2020-03/documents/oecamemoonccovid19implications.pdf>

As indicated in the Bodine memo, entities should make every effort to comply with their NPDES permits. However, if for reasons related to COVID-19, the Commission is not able to perform certain tasks required by its permit, SWSC should maintain records that explain the specific reasons for not being able to perform the tasks and how COVID-19 was the cause of the noncompliance. Please maintain documentation of this information and include it as part of SWSC's 2020 Annual CSO report.

Details related to NPDES Reporting in Response to the COVID-19 Pandemic can be found at:

<https://netdmr.zendesk.com/hc/en-us/articles/360041746691-Covid-19-Information-Page>

Feel free to contact Doug Koopman, 617-918-1747, or Jeff Kopf, Senior Enforcement Counsel, 617-918-1796, if you have further questions on how this policy relates to SWSC's circumstances.

Thank you  
Doug

(617)918-1747  
[Koopman.Douglas@epa.gov](mailto:Koopman.Douglas@epa.gov)  
EPA Region I  
5 Post Office Square, Suite 100  
Mail code 04-03  
Boston MA, 02109-3912



## Melcher, John

---

**Subject:** FW: [SPAM-Sender] Swansea Water District: 2020 NPDES Permit Testing

---

**From:** Turin, David  
**Sent:** Monday, May 18, 2020 2:53 PM  
**To:** [jsutherland@swanseawaterdistrict.com](mailto:jsutherland@swanseawaterdistrict.com)  
**Cc:** Catherine Vakalopoulos ([catherine.vakalopoulos@state.ma.us](mailto:catherine.vakalopoulos@state.ma.us)) <[catherine.vakalopoulos@state.ma.us](mailto:catherine.vakalopoulos@state.ma.us)>; Cobb, Michael <[Cobb.Michael@epa.gov](mailto:Cobb.Michael@epa.gov)>; Kopf, Jeff <[Kopf.Jeff@epa.gov](mailto:Kopf.Jeff@epa.gov)>; [mBacon@SwanseaWaterDistrict.com](mailto:mBacon@SwanseaWaterDistrict.com); [drutecki@normandeau.com](mailto:drutecki@normandeau.com)  
**Subject:** RE: [SPAM-Sender] Swansea Water District: 2020 NPDES Permit Testing

Dear Mr. Sutherland:

Thank for your email, which was referred to me, requesting guidance with regard to your request for an extension to the whole effluent toxicity (WET) testing required under your NPDES permit.

In response to noncompliance related to the COVID-19 pandemic, Susan Parker Bodine, Assistant Administrator for Enforcement and Compliance Assurance at EPA Headquarters, has issued a temporary policy announcing the exercise of enforcement discretion for certain environmental obligations. That memo, accessible at the link below, establishes specific conditions to be met, if you are unable to meet obligations identified in your NPDES permit.

<https://www.epa.gov/sites/production/files/2020-03/documents/oecamemooncovid19implications.pdf>

As indicated in the Bodine memo, entities should make every effort to comply with their NPDES permits. However, if for reasons related to COVID-19, you are able to obtain some but not all of your samples or analyze some but not all of your samples required by your permit, please submit your discharge monitoring reports (DMRs) through NetDMR by the due date with the information you have been able to obtain. Please also provide an explanation in either the comment section of the DMR or in a separate attachment describing how COVID-19 impacted your ability to take or analyze all of your required samples. For samples required by your permit that you are not able to collect or analyze because of COVID-19, please submit your DMRs through NetDMR by the due date using the No Data Indicator or NODI code of "Z" - "COVID-19". When using the NODI code Z, a facility should provide an explanation in either the comment section of the DMR or in a separate attachment added to the DMR. The explanation should identify the specific reasons for the sampling/reporting delay and how COVID-19 was the cause of the noncompliance. If you need help adding an attachment through NetDMR please send an email to [R1.NetDMR@epa.gov](mailto:R1.NetDMR@epa.gov).

Details related to NPDES Reporting in Response to the COVID-19 Pandemic can be found at:

<https://netdmr.zendesk.com/hc/en-us/articles/360041746691-Covid-19-Information-Page>

Feel free to contact me at [turin.david@epa.gov](mailto:turin.david@epa.gov) or 617-918-1598 if you have additional questions related to submission of WET testing data. Legal questions may be referred to Jeff Kopf, Senior Enforcement Counsel, at [kopf.jeff@epa.gov](mailto:kopf.jeff@epa.gov) or 617-918-1796.

Sincerely, David

---

David Turin  
U.S. Environmental Protection Agency

Water Compliance Section - Mail code: 04-3  
Enforcement and Compliance Assurance Division  
5 Post Office Square - Suite 100  
Boston MA 02109 - 3912

Tel. (617) 918-1598 :: Fax (617) 918-0598  
[turin.david@epa.gov](mailto:turin.david@epa.gov)

---

**From:** Jeffrey Sutherland <[jsutherland@swanseawaterdistrict.com](mailto:jsutherland@swanseawaterdistrict.com)>  
**Sent:** Friday, May 15, 2020 2:37 PM  
**To:** [catherine.vakalopoulos@state.ma.us](mailto:catherine.vakalopoulos@state.ma.us); Cobb, Michael <[Cobb.Michael@epa.gov](mailto:Cobb.Michael@epa.gov)>  
**Cc:** 'Debbie Rutecki' <[drutecki@normandeau.com](mailto:drutecki@normandeau.com)>; 'Mike Bacon' <[mBacon@SwanseaWaterDistrict.com](mailto:mBacon@SwanseaWaterDistrict.com)>  
**Subject:** [SPAM-Sender] Swansea Water District: 2020 NPDES Permit Testing

Good Afternoon,

The Swansea Water District would like to request an extension to our WET testing which typically takes place in May. We are requesting to have this testing performed in June when the Desalination Facility goes online.

With respect to the current state of affairs as it pertains to the COVID-19 pandemic, the Swansea Water District is operating with minimal staff and we do not have the man power to place the facility online at this time.

Please consider this request under these trying times and allow the Swansea Water District to postpone facility start up and Wet testing until June.

If you have any further questions or concerns as it pertains to this matter please do not hesitate to contact me.

I thank you for your time and consideration as it pertains to this matter,

Jeffrey H. Sutherland, P.E.

*Superintendent*



[www.swanseawaterdistrict.com](http://www.swanseawaterdistrict.com)

700 Wilbur Ave.  
Swansea, MA 02777  
Office: 508.672.9746 / 508.676.9097  
Fax: 508.676.7452

## Bhatt, Krishna

---

**From:** Larson, Chris <Chris.Larson@terracon.com>  
**Sent:** Tuesday, April 14, 2020 4:07 PM  
**To:** Noles, Jordan  
**Subject:** RE: RMP Audits due during COVID 19

Mr Noles,

I appreciate your quick response and attached memo.

Thank you for the guidance.

Chris Larson

---

**From:** Noles, Jordan <Noles.Jordan@epa.gov>  
**Sent:** Tuesday, April 14, 2020 1:47 PM  
**To:** Larson, Chris <Chris.Larson@terracon.com>  
**Subject:** RE: RMP Audits due during COVID 19

Mr. Larson,

I have attached a memo (COVID-19 Implications for EPA's Enforcement and Compliance Assurance Program) from the EPA. It gives guidance for this situation. It basically says if compliance is not reasonably practicable, facilities should, among other things: identify the specific nature and dates of noncompliance, identify how COVID-19 was the cause of the noncompliance, and document the information, action or condition specified above.

I would say what you laid out in your email is the right approach, just make sure your client documents the reason of non-compliance, if they are not able to complete any of the required elements during the pandemic.

Let me know if you have any more questions.

Thank you,

Jordan Noles  
404.562.9105

---

**From:** Larson, Chris <[Chris.Larson@terracon.com](mailto:Chris.Larson@terracon.com)>  
**Sent:** Tuesday, April 14, 2020 9:16 AM  
**To:** Noles, Jordan <[Noles.Jordan@epa.gov](mailto:Noles.Jordan@epa.gov)>; Groendyke, Todd <[Groendyke.Todd@epa.gov](mailto:Groendyke.Todd@epa.gov)>  
**Subject:** RMP Audits due during COVID 19

Good morning,

I tried calling the 404-562-9150 number and keep getting disconnected. I found your contact information on the <https://www.epa.gov/rmp/epa-regional-rmp-contacts> website.

I am working with a client of mine in Region 4 and their RMP program. They have a 3-yr audit that is due to be completed by early June. Due to the current COVID-19 situation, there are safety concerns regarding travel to and from the site in order to complete this audit. Is there any guidance from the EPA regarding the completion of these audits?

Should we attempt to complete as much as possible remotely until travel is safe and finish it in person? Wait until the pandemic has subsided and or relaxed federal/state guidance has occurred? Obviously if everything subsides prior to the due date the audit will be completed on time.

Please let me know. I look forward to hearing back from you.

**Chris Larson**

**Staff Engineer - Chemical**

**Terracon**

13400 15<sup>th</sup> Avenue N, Suite A | Minneapolis, MN 55441

D (763)-489-3153 | F (913)-541-8907 | M (218)-289-5740

**[Chris.Larson@terracon.com](mailto:Chris.Larson@terracon.com)** | **[terracon.com](http://terracon.com)**

Terracon provides environmental, facilities, geotechnical, and materials consulting engineering services delivered with responsiveness, resourcefulness, and reliability.

---

*Private and confidential as detailed here ([www.terracon.com/disclaimer](http://www.terracon.com/disclaimer)). If you cannot access the hyperlink, please e-mail sender.*

## Melcher, John

---

**From:** Maeghan Dos Anjos <mdosanjos@ashlandmass.com>  
**Sent:** Wednesday, April 01, 2020 8:31 AM  
**To:** Tedder, Newton  
**Cc:** Schiffman, Laura (DEP); Borci, Todd  
**Subject:** Re: MS4 Permit- Grace Periods?  
**Attachments:** ATT00001.txt

Thank you!

Kindest Regards,  
Maeghan

On Tue, Mar 31, 2020 at 4:59 PM Tedder, Newton <[Tedder.Newton@epa.gov](mailto:Tedder.Newton@epa.gov)> wrote:

Hi Maeghan,

The official EPA policy for this situation can be found here <https://www.epa.gov/sites/production/files/2020-03/documents/oecamemooncovid19implications.pdf> . Practically, MS4s should try to comply with all permit requirements while staying safe. For activities you were not able to perform please keep detailed records of the situation and reasons you could not complete the permit requirements. You will then be reporting that information in the annual report.

Newton W. Tedder

Senior Permit Writer

Stormwater and Construction Section  
U.S. Environmental Protection Agency, Region 1  
5 Post Office Square  
Mail Code 06-4  
Boston, MA 02109-3912  
Phone: (617) 918-1038

*All drains lead to the ocean*

---

**From:** Schiffman, Laura (DEP) <[laura.schiffman@state.ma.us](mailto:laura.schiffman@state.ma.us)>  
**Sent:** Tuesday, March 31, 2020 4:32 PM  
**To:** Maeghan Dos Anjos <[mdosanjos@ashlandmass.com](mailto:mdosanjos@ashlandmass.com)>; Tedder, Newton <[Tedder.Newton@epa.gov](mailto:Tedder.Newton@epa.gov)>  
**Subject:** Re: MS4 Permit- Grace Periods?

Hi Maeghan,

this is really a question for EPA to answer. I have included Newton Tedder here so he can provide a response.

Laura

Laura Schiffman, Ph.D.

Stormwater Coordinator

Massachusetts Department of Environmental Protection

[p] (617) 556-1157

[e] [laura.schifman@mass.gov](mailto:laura.schifman@mass.gov)

[w] <https://www.mass.gov/info-details/stormwater>

---

**From:** Maeghan Dos Anjos <[mdosanjos@ashlandmass.com](mailto:mdosanjos@ashlandmass.com)>

**Sent:** Tuesday, March 31, 2020 3:01 PM

**To:** Schiffman, Laura (DEP)

**Subject:** MS4 Permit- Grace Periods?

CAUTION: This email originated from a sender outside of the Commonwealth of Massachusetts mail system. Do not click on links or open attachments unless you recognize the sender and know the content is safe.

Good Afternoon, Laura,

I was just wondering if EPA has any grace periods for the MS4 permit. For example, will EPA forgive some items if they are not finalized this year given the COVID 19 circumstances? We are just trying to plan our budget and the question came up.

Thank you,

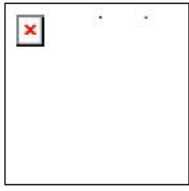



Maeghan

--

	<p><b>Maeghan Dos Anjos</b> <i>Conservation Agent/Director</i> <a href="#">Town of Ashland</a> a: 101 Main Street, Ashland, MA 01721 p: 508-532-7924</p> <p></p>
---	---

Please remember when writing or responding, the Massachusetts Secretary of State has determined that e-mail is a public record. This e-mail is intended to be conveyed only to the designated recipient(s) named above. Any use, dissemination, distribution, or reproduction of this message by unintended recipients is not authorized and may be unlawful.

--

	<p><b>Maeghan Dos Anjos</b> <i>Conservation Agent/Director</i> <a href="#">Town of Ashland</a> a: 101 Main Street, Ashland, MA 01721 p: 508-532-7924</p> <p></p>
---	---



Please remember when writing or responding, the Massachusetts Secretary of State has determined that e-mail is a public record. This e-mail is intended to be conveyed only to the designated recipient(s) named above. Any use, dissemination, distribution, or reproduction of this message by unintended recipients is not authorized and may be unlawful.

## Melcher, John

---

**Subject:** FW: Town of Nantucket Annual CMOM Report Deadline Extension Request

---

**From:** Kramer, Daniel <[DKramer@hazenandsawyer.com](mailto:DKramer@hazenandsawyer.com)>  
**Sent:** Tuesday, March 31, 2020 3:18 PM  
**To:** Turin, David <[Turin.David@epa.gov](mailto:Turin.David@epa.gov)>  
**Cc:** Wilson, Charles <[CWilson@hazenandsawyer.com](mailto:CWilson@hazenandsawyer.com)>; David Gray <[dgray@nantucket-ma.gov](mailto:dgray@nantucket-ma.gov)>  
**Subject:** Town of Nantucket Annual CMOM Report Deadline Extension Request

Good afternoon Mr. Turin,

On behalf of the Town of Nantucket, please find attached a letter requesting an extension of the deadline for the Annual CMOM Report in light of the COVID-19 pandemic. Please do not hesitate to reach out to me with any questions or comments. I am accessible via my direct line below, or by my cell phone (b) (6) .

Thank you,  
Dan Kramer

**Daniel W. Kramer, P.E.**

**Principal Engineer | Hazen and Sawyer**  
24 Federal Street, 5<sup>th</sup> Floor, Boston, MA 02110  
857-305-4090 (direct) | 617-574-4747 (main)  
[dkramer@hazenandsawyer.com](mailto:dkramer@hazenandsawyer.com) | [hazenandsawyer.com](http://hazenandsawyer.com)



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 1  
5 POST OFFICE SQUARE, SUITE 100  
BOSTON, MA 02109-3912

SENT VIA ELECTRONIC MAIL – DELIVERY RECEIPT REQUESTED

April 2, 2020

Chuck Wilson, PE  
Senior Associate  
Hazen and Sawyer  
24 Federal Street, 5th Floor  
Boston, MA 02110

Subject: Extension Request pursuant to EPA Administrative Order on Consent  
Docket No. CWA-AO-R01-FY17-02

Dear Mr. Wilson:

Thank you for your letter of March 31, 2020 regarding the requirement for submission of an annual report in accordance with the above-referenced Order on Consent.

With this letter, EPA is granting your request for an extension for submission of the annual report originally due on March 31, 2020 until April 30, 2020 because of delays associated with the Town's response to Covid-19.

Please contact David Turin at (617) 918-1598 or [turin.david@epa.gov](mailto:turin.david@epa.gov) if you have questions or need additional information.

Sincerely,

**DENNY DART**

Digitally signed by  
DENNY DART  
Date: 2020.04.02  
09:28:57 -04'00'

Denny Dart, Chief  
Water Compliance Section

CC (Via Email):

David Gray (Nantucket Sewer Department) <dgray@nantucket-ma.gov>  
Daniel Kramer (Hazen and Sawyer) <DKramer@hazenandsawyer.com>  
David Burns (DEP) <david.burns@state.ma.us>  
David Turin (EPA) <turin.david@epa.gov>  
Jeff Kopf (EPA) <kopf.Jeff@epa.gov>

## Melcher, John

---

**From:** Tedder, Newton  
**Sent:** Thursday, April 02, 2020 11:53 AM  
**To:** Paul Hutnak  
**Cc:** Borci, Todd  
**Subject:** RE: MS4 Requirements

Hi Paul

The official EPA policy for this situation can be found here <https://www.epa.gov/sites/production/files/2020-03/documents/oecamemooncovid19implications.pdf> . Practically, MS4s should try to comply with all permit requirements while staying safe. For activities you were not able to perform please keep detailed records of the situation and reasons you could not complete the permit requirements. You will then be reporting that information in the annual report.

Hope that helps

Newton W. Tedder

Senior Permit Writer  
Stormwater and Construction Section  
U.S. Environmental Protection Agency, Region 1  
5 Post Office Square  
Mail Code 06-4  
Boston, MA 02109-3912  
Phone: (617) 918-1038

*All drains lead to the ocean*

---

**From:** Paul Hutnak <PHutnak@uxbridge-ma.gov>  
**Sent:** Thursday, April 02, 2020 11:42 AM  
**To:** Tedder, Newton <Tedder.Newton@epa.gov>  
**Subject:** MS4 Requirements

Hi Newton,

I am checking in to see if there will be any extensions given for the MS4 permit timelines in Massachusetts. Please let me know when you have a moment. Thanks for your help.

Thanks,

**Paul B. Hutnak, P.E.**  
**Civil Engineer**  
**Department of Public Works**  
Town of Uxbridge  
147 Hecla Street  
Uxbridge, MA 01569  
508-278-8616 508-278-3179 Fax

Kindly remember that the Secretary of State has deemed email a public record.



Please consider the environment before printing this email.

**Email Communication with the Town of Vestal, Sanitary Sewer System, New York.**

**From:** Steed, Tim <[steedt@hunt-eas.com](mailto:steedt@hunt-eas.com)>  
**Sent:** Friday, April 17, 2020 9:54 AM  
**To:** Ali, Zarine <[Ali.Zarine@epa.gov](mailto:Ali.Zarine@epa.gov)>; [jschaffer@vestalny.com](mailto:jschaffer@vestalny.com); Scott Groats <[sgroats@vestalny.com](mailto:sgroats@vestalny.com)>; Vernon Myers <[vmyers@vestalny.com](mailto:vmyers@vestalny.com)>; [pfitzgerald@vestalny.com](mailto:pfitzgerald@vestalny.com); [thunsinger@vestalny.com](mailto:thunsinger@vestalny.com)  
**Cc:** Blum, Tara M (DEC) <[tara.blum@dec.ny.gov](mailto:tara.blum@dec.ny.gov)>; Vigneault, Thomas M (DEC) <[thomas.vigneault@dec.ny.gov](mailto:thomas.vigneault@dec.ny.gov)>  
**Subject:** RE: EPA - Town of Vestal AO Extension Letter

Zarine, Received and thank you for your assistance on this. Tim

**Timothy K. Steed, PE**  
**Director of Site/Civil/Municipal Engineering, Principal**

**HUNT** ENGINEERS | ARCHITECTS | SURVEYORS  
C: (607) 769-1024  
P: (607) 358-1000 Ext:1063  
[www.hunt-eas.com](http://www.hunt-eas.com)

**From:** Ali, Zarine <[Ali.Zarine@epa.gov](mailto:Ali.Zarine@epa.gov)>  
**Sent:** Thursday, April 16, 2020 1:43 PM  
**To:** [jschaffer@vestalny.com](mailto:jschaffer@vestalny.com); Steed, Tim <[steedt@hunt-eas.com](mailto:steedt@hunt-eas.com)>; Scott Groats <[sgroats@vestalny.com](mailto:sgroats@vestalny.com)>; Vernon Myers <[vmyers@vestalny.com](mailto:vmyers@vestalny.com)>; [pfitzgerald@vestalny.com](mailto:pfitzgerald@vestalny.com); [thunsinger@vestalny.com](mailto:thunsinger@vestalny.com)  
**Cc:** Blum, Tara M (DEC) <[tara.blum@dec.ny.gov](mailto:tara.blum@dec.ny.gov)>; Vigneault, Thomas M (DEC) <[thomas.vigneault@dec.ny.gov](mailto:thomas.vigneault@dec.ny.gov)>  
**Subject:** EPA - Town of Vestal AO Extension Letter

Hi Tim/ Scott/Vern, hope you guys are having a great day. I have attached the Administrative Order's extension letter for the updated CMOM Plan. Thanks again for reaching out. EPA knows that municipalities are working with a reduced staff and everyone is trying to do the best that can be expected during a pandemic. We are in uncertain times and hopefully things will get better for us in the upcoming weeks. I usually send any document for an Order in hardcopy, but as the EPA building is closed I am sending it via email. I don't know when I will be back in the building as it is closed.

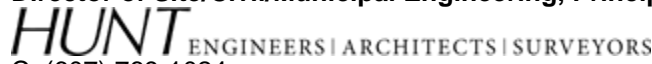
I included Mr. Schaffer on this email. I visited the Town's website and I got his address. If the Town needs help with anything please feel free to reach out. If someone working on this document gets sick or is taking care of loved ones who are sick and you think you cannot meet the new July 1, 2020, deadline please have someone reach out. EPA will work with the Town. If I don't hear from you guys by the first week in July I will send a reminder email. Thanks again for working with the EPA, and for all the documents you already submitted. Best wishes and be safe everyone. - Zarine

Ms. Zarine Ali  
Small Clean Water Compliance Programs Team  
Water Compliance Branch  
Enforcement and Compliance Assurance Division  
USEPA Region 2 – Floor 21

290 Broadway  
New York, NY 10007  
(212) 637-3919  
[ali.zarine@epa.gov](mailto:ali.zarine@epa.gov)

**From:** Steed, Tim <[steedt@hunt-eas.com](mailto:steedt@hunt-eas.com)>  
**Sent:** Wednesday, April 15, 2020 10:58 PM  
**To:** Ali, Zarine <[Ali.Zarine@epa.gov](mailto:Ali.Zarine@epa.gov)>; Scott Groats <[sgroats@vestalny.com](mailto:sgroats@vestalny.com)>; Vernon Myers <[vmyers@vestalny.com](mailto:vmyers@vestalny.com)>  
**Subject:** RE: EPA Follow-up

Zarine,  
I spoke with Scott today and we will follow your lead and request additional time until July 1, 2020.  
Thanks,  
Tim

**Timothy K. Steed, PE**  
**Director of Site/Civil/Municipal Engineering, Principal**  
  
C: (607) 769-1024  
P: (607) 358-1000 Ext:1063  
[www.hunt-eas.com](http://www.hunt-eas.com)

**From:** Ali, Zarine <[Ali.Zarine@epa.gov](mailto:Ali.Zarine@epa.gov)>  
**Sent:** Wednesday, April 15, 2020 12:32 PM  
**To:** Steed, Tim <[steedt@hunt-eas.com](mailto:steedt@hunt-eas.com)>; Scott Groats <[sgroats@vestalny.com](mailto:sgroats@vestalny.com)>; Vernon Myers <[vmyers@vestalny.com](mailto:vmyers@vestalny.com)>  
**Subject:** RE: EPA Follow-up

Hey guys, ok I am doing a letter with a revised date of June 1, 2020, for the submission of the CMOM Plan. I will send the letter probably tomorrow or Friday. My boss will have to sign the letter before I send it via email. Be safe and reach out if there is anything I can do for you. All the best, - Zarine

Ms. Zarine Ali  
Small Clean Water Compliance Programs Team  
Water Compliance Branch  
Enforcement and Compliance Assurance Division  
USEPA Region 2 – Floor 21  
290 Broadway  
New York, NY 10007  
(212) 637-3919  
[ali.zarine@epa.gov](mailto:ali.zarine@epa.gov)

**From:** Ali, Zarine  
**Sent:** Tuesday, April 14, 2020 4:55 PM  
**To:** Steed, Tim <[steedt@hunt-eas.com](mailto:steedt@hunt-eas.com)>; Scott Groats <[sgroats@vestalny.com](mailto:sgroats@vestalny.com)>; Vernon Myers <[vmyers@vestalny.com](mailto:vmyers@vestalny.com)>  
**Subject:** RE: EPA Follow-up

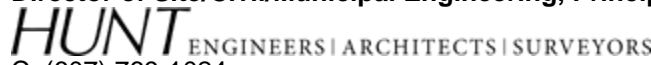


Thanks Tim. Are you sure you want June 1, 2020? We are in mid-April and May will go by quickly. I know the guys are short on staff.

Ms. Zarine Ali  
Small Clean Water Compliance Programs Team  
Water Compliance Branch  
Enforcement and Compliance Assurance Division  
USEPA Region 2 – Floor 21  
290 Broadway  
New York, NY 10007  
(212) 637-3919  
[ali.zarine@epa.gov](mailto:ali.zarine@epa.gov)

**From:** Steed, Tim <[steedt@hunt-eas.com](mailto:steedt@hunt-eas.com)>  
**Sent:** Tuesday, April 14, 2020 4:46 PM  
**To:** Ali, Zarine <[Ali.Zarine@epa.gov](mailto:Ali.Zarine@epa.gov)>; Scott Groats <[sgroats@vestalny.com](mailto:sgroats@vestalny.com)>; Vernon Myers <[vmyers@vestalny.com](mailto:vmyers@vestalny.com)>  
**Subject:** RE: EPA Follow-up

Zarine,  
In conversation with Scott Groats of the Town, and our vague understanding of the current COVID 19 situation, we feel that June 1, 2020 is a reachable goal considering the current operational inefficiencies. If there are ongoing or additional governmental mandates regarding staffing, shutdowns, etc. we can discuss in May. If you should have any questions, please do not hesitate to contact us.  
Thanks,  
Tim

**Timothy K. Steed, PE**  
**Director of Site/Civil/Municipal Engineering, Principal**  
  
C: (607) 769-1024  
P: (607) 358-1000 Ext:1063  
[www.hunt-eas.com](http://www.hunt-eas.com)

**From:** Ali, Zarine <[Ali.Zarine@epa.gov](mailto:Ali.Zarine@epa.gov)>  
**Sent:** Tuesday, April 14, 2020 9:41 AM  
**To:** Steed, Tim <[steedt@hunt-eas.com](mailto:steedt@hunt-eas.com)>; Scott Groats <[sgroats@vestalny.com](mailto:sgroats@vestalny.com)>; Vernon Myers <[vmyers@vestalny.com](mailto:vmyers@vestalny.com)>  
**Subject:** RE: EPA Follow-up

Good Morning guys, hope everyone is doing well and safe. I need the official request and the date you think you will be able to submit the CMOM Plan. You can send this in an email, you don't have to do a formal letter. I just need a new due date so I can put this in the EPA system. EPA will give you the time you need. You guys can always call me anytime if you want to chat about anything.

All the best, - Zarine.

Ms. Zarine Ali

Small Clean Water Compliance Programs Team  
Water Compliance Branch  
Enforcement and Compliance Assurance Division  
USEPA Region 2 – Floor 21  
290 Broadway  
New York, NY 10007  
(212) 637-3919  
[ali.zarine@epa.gov](mailto:ali.zarine@epa.gov)

**From:** Ali, Zarine

**Sent:** Friday, April 10, 2020 8:03 AM

**To:** Steed, Tim <[steedt@hunt-eas.com](mailto:steedt@hunt-eas.com)>; Scott Groats <[sgroats@vestalny.com](mailto:sgroats@vestalny.com)>; Vernon Myers <[vmyers@vestalny.com](mailto:vmyers@vestalny.com)>

**Subject:** RE: EPA Follow-up

Thanks Tim. Yes, it's crazy now and I don't see things getting better anytime soon. Send a formal request for an extension to submit the updated CMOM and decide when it will be good for you guys. Don't be too conservative, for example, if you think you need 3 months request 4 months. I will need a specific date to give an extension, so choose a date that is good for you. If you finish the CMOM before the date you request, you can submit it earlier. You already have a CMOM Plan so all you need to do is polish up the sections mentioned in the Order.

EPA Orders are formal, so when you send the request, whatever you send I will add to a letter and my boss Larry will sign it. I will then email the letter to you guys and the Town's Supervisor. I got John Shaffer's email on the Town's website. The letter will be addressed to John. While I am working at home I am sending all letters by email. Municipalities ask for extensions to submit documents all the time so it's not a big deal. Also, no one knew we would be in a pandemic. Just give John a heads up that he will receive the letter via email. I don't want him to be surprised.

I will have to change how I interact with the guys during an inspection until they find a vaccine. I am usually standing close and chatting people up. I will have the change this and try to practice some sort of social distancing. I hope you and your loved ones stay safe. Hopefully, things will get better for us soon. If there is anything I can do for you guys, all you need to do is ask. All the best, - Zarine

Ms. Zarine Ali  
Small Clean Water Compliance Programs Team  
Water Compliance Branch  
Enforcement and Compliance Assurance Division  
USEPA Region 2 – Floor 21  
290 Broadway  
New York, NY 10007  
(212) 637-3919  
[ali.zarine@epa.gov](mailto:ali.zarine@epa.gov)

**From:** Steed, Tim <[steedt@hunt-eas.com](mailto:steedt@hunt-eas.com)>

**Sent:** Thursday, April 09, 2020 9:20 PM

**To:** Ali, Zarine <[Ali.Zarine@epa.gov](mailto:Ali.Zarine@epa.gov)>; Scott Groats <[sgroats@vestalny.com](mailto:sgroats@vestalny.com)>; Vernon Myers

<[vmyers@vestalny.com](mailto:vmyers@vestalny.com)>

**Subject:** RE: EPA Follow-up

Zarine,

Thank you for your inquiry and reminder. The Town is currently operating on significantly reduced staff as well as our office is shut down. While this situation is uncertain for all, the only thing we have to go on regarding potentially returning to work is the government's April 30 date regarding social distancing requirement and shutdown of nonessential businesses. Obviously given this situation that has persisted since late March through the present will prompt an extension request for the last remaining report. I will review with Scott via telephone and send you a formal request tomorrow.

Thank you,

Tim

**Timothy K. Steed, PE**

**Director of Site/Civil/Municipal Engineering, Principal**

**HUNT** ENGINEERS | ARCHITECTS | SURVEYORS

C: (607) 769-1024

P: (607) 358-1000 Ext:1063

[www.hunt-eas.com](http://www.hunt-eas.com)

**From:** Ali, Zarine <[Ali.Zarine@epa.gov](mailto:Ali.Zarine@epa.gov)>

**Sent:** Tuesday, April 7, 2020 9:52 AM

**To:** Scott Groats <[sgroats@vestalny.com](mailto:sgroats@vestalny.com)>; Vernon Myers <[vmyers@vestalny.com](mailto:vmyers@vestalny.com)>; Steed, Tim <[steedt@hunt-eas.com](mailto:steedt@hunt-eas.com)>

**Subject:** EPA Follow-up

Good Morning guys, hope everyone is safe and doing well. I don't know if you received my last email. The EPA system will flag that you have not submitted the updated CMOM Plan, so I need to get an update. You are not submitting a new document, just an updated one with the sections mentioned in the Order. Just make sure all the appendices mentioned in the document are attached.

If you need additional time to submit the document I need to know. EPA Orders are formal, so if you need a lot of time I will have to send a formal letter granting you this. You can call me if you want to discuss anything. All the best, Zarine

Ms. Zarine Ali

Small Clean Water Compliance Programs Team

Water Compliance Branch

Enforcement and Compliance Assurance Division

USEPA Region 2 – Floor 21

290 Broadway

New York, NY 10007

(212) 637-3919

[ali.zarine@epa.gov](mailto:ali.zarine@epa.gov)

**From:** Ali, Zarine

**Sent:** Wednesday, April 01, 2020 11:50 AM

**To:** Scott Groats <[sgroats@vestalny.com](mailto:sgroats@vestalny.com)>; Vernon Myers <[vmyers@vestalny.com](mailto:vmyers@vestalny.com)>; [steedt@hunt-eas.com](mailto:steedt@hunt-eas.com)

**Subject:** EPA Follow-up

Hi Scott/Vern/Tim, hope you guys are doing the best that can be expected during this difficult time. I know the updated CMOM plan is due today, April 1<sup>st</sup>, 2020. If the Town needs additional time to submit this document please let me know. I know municipalities are short on staff as they practice social distancing to limit potential exposures to the virus. Everyone is focusing on other priorities at the moment.

If you do need additional time to submit the document, please let me know how much additional time you may need. For example a few weeks or months. I will work with you.

I do wish you the very best during these difficult times and hope to be in contact with you guys. In the meantime if there is something you feel I could help you with please feel free to call or email me. You can call me anytime. All calls to my work number is sent to my cell phone. I have been working at home for the past 3 weeks and I will be at home for all of April. I had to postpone 2 inspections. I don't know when next I will be back doing inspections. The EPA building is closed.

Hope you and your loved ones are safe. Hopefully, things will get better in the coming weeks. All the best, Zarine

Ms. Zarine Ali  
Small Clean Water Compliance Programs Team  
Water Compliance Branch  
Enforcement and Compliance Assurance Division  
USEPA Region 2 – Floor 21  
290 Broadway  
New York, NY 10007  
(212) 637-3919  
[ali.zarine@epa.gov](mailto:ali.zarine@epa.gov)



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**

REGION 2  
290 BROADWAY  
NEW YORK, NY 10007-1866

04/16/2020

Mr. W. John Schaffer, Supervisor  
Town of Vestal  
605 Vestal Parkway West  
Vestal, New York 13850

Re: Administrative Docket No. CWA-02-2019-3039  
Town of Vestal POSS Numbers: NYS700050, NYS700032  
Town of Vestal SPDES Permit No. NY0262749  
Clean Water Act Administrative Compliance Order

Dear Mr. Schaffer:

On August 14, 2019, the United States Environmental Protection Agency ("EPA") issued the Town of Vestal ("Town") an Administrative Compliance Order ("Order"), CWA-02-2019-3039, because the Town had violated Clean Water Act Sections 301 and 402, 33 U.S.C. §§ 1311 and 1342, for failing to comply with the conditions and limitations of its New York State Department of Environmental Conservation State Pollutant Discharge Elimination System ("SPDES") Permit No. NY0262749.

"Ordered Provisions," Item No. 8, of the Town's Administrative Order requires that, by April 1, 2020, the Town develop and submit to EPA and NYSDEC an updated CMOM Plan which meets the requirements of the Town's SPDES Permit "Special Conditions for the CMOM Program," Part (3)(g) and Part (3)(h).

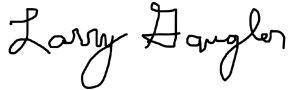
On April 9, 2020, EPA's Ms. Zarine Ali received an email from Mr. Timothy Steed of Hunt Engineers, Architects and Surveyors, on behalf of the Town. Mr. Steed stated that the Town is currently operating with a significantly reduced staff as a result of COVID-19. Given that the current situation has persisted since late March 2020 to the present, this has prompted an extension request for the submission of the last item, an updated CMOM Plan, required under the Town's Administrative Order.

On April 14 and April 15, 2020, Ms. Zarine Ali received follow-up emails from Mr. Timothy Steed. Mr. Steed stated that based on conversations with Mr. Scott Groats, the Town's Water Superintendent, and their vague understanding of the current COVID-19 situation, they feel that July 1, 2020, is a reachable goal considering the Town's current operational inefficiencies. The EPA and the Town have both agreed on a revised submittal date of July 1, 2020.

Failure to comply with the Order may subject the Town to civil/criminal penalties pursuant to Section 309 of the Clean Water Act. Failure to comply with the Order shall also subject the Town to ineligibility for participation in work associated with Federal contracts, grants or loans.

If you have any questions or concerns, please contact me at (212) 637-3950 or have your staff contact Ms. Zarine Ali at 212-637-3919.

Sincerely,

A handwritten signature in black ink that reads "Larry Gaugler". The signature is written in a cursive, flowing style.

Larry Gaugler, P.E., SCWCP Team Leader  
Water Compliance Branch

cc: Thomas Vigneault, P.E., Regional Water Engineer, NYSDEC Region 7  
Tara M. Blum, P.E., Professional Engineer 1, Division of Water, NYSDEC Region 7  
Scott Groats, Water Superintendent, Town of Vestal  
Todd Hunsinger, Assistant Water/Wastewater Superintendent, Town of Vestal  
Patty Fitzgerald, Councilwoman, Town of Vestal  
Timothy K. Steed, P.E., Hunt Engineers, Architects, Surveyors

## Melcher, John

---

**Subject:** FW: Tradebe oxidizer plan extensions

---

**From:** Viggiani, Steven <[viggiani.steven@epa.gov](mailto:viggiani.steven@epa.gov)>  
**Sent:** Tuesday, March 31, 2020 5:08 PM  
**To:** LaGrimas, Tita <[Tita.LaGrimas@tradebe.com](mailto:Tita.LaGrimas@tradebe.com)>; Kowalczyk, Sarah <[sarah.kowalczyk@tradebe.com](mailto:sarah.kowalczyk@tradebe.com)>  
**Cc:** Piligian, Richard <[piligian.rich@epa.gov](mailto:piligian.rich@epa.gov)>; Jouzaitis, Joan <[jouzaitis.joan@epa.gov](mailto:jouzaitis.joan@epa.gov)>; Osbahr, Bill <[osbahr.william@epa.gov](mailto:osbahr.william@epa.gov)>; Bobbs, Nicholas <[bobbs.nicholas@epa.gov](mailto:bobbs.nicholas@epa.gov)>; Sansevero, Christine <[Sansevero.Christine@epa.gov](mailto:Sansevero.Christine@epa.gov)>; Rapp, Steve <[Rapp.Steve@epa.gov](mailto:Rapp.Steve@epa.gov)>  
**Subject:** Tradebe oxidizer plan extensions

Dear Sarah and Tita,

As we discussed on our conference call today, EPA and Tradebe agree to extend the deadline for EPA to provide its initial comments on Tradebe's Meriden oxidizer performance test plant until May 15, 2020. (EPA and Tradebe had previously extended this deadline to March 31, 2020.) This agreement is made pursuant to Paragraph 68 of the Tradebe Consent Decree.

As we also discussed, EPA and Tradebe agree to extend Tradebe's deadline to provide a revised performance test plan for Tradebe's Bridgeport oxidizer until May 15, 2020. (The parties had also previously extended this deadline to March 31, 2020.) As above, this agreement is made pursuant to Paragraph 68 of the Decree.

In these unprecedented times, both EPA and Tradebe recognize that these deadlines may need to be further altered but will use best efforts given the current circumstances to meet them.

Sarah, if you would send me a confirming email re the parties' agreements above I would appreciate it.

Best regards,  
Steve Viggiani  
Senior Enforcement Counsel  
EPA Region 1

---

**From:** LaGrimas, Tita <[Tita.LaGrimas@tradebe.com](mailto:Tita.LaGrimas@tradebe.com)>  
**Sent:** Monday, March 30, 2020 5:02 PM  
**To:** Viggiani, Steven <[viggiani.steven@epa.gov](mailto:viggiani.steven@epa.gov)>; Piligian, Richard <[piligian.rich@epa.gov](mailto:piligian.rich@epa.gov)>  
**Cc:** Kowalczyk, Sarah <[sarah.kowalczyk@tradebe.com](mailto:sarah.kowalczyk@tradebe.com)>  
**Subject:** Tradebe - Bridgeport Performance Testing Protocol Comments

Dear Mr. Viggiani and Mr. Piligian,

I hope you are doing well during this time.

The purpose of our email is to follow up on our anticipated call with USEPA that was to occur prior to the resubmittal of the Performance Test Stack Plan for Bridgeport. The Plan was to be submitted tomorrow, on March 31, 2020 however, Tradebe's Performance Plan Vendor and USEPA were going to review and discuss EPA's requested changes. The two teams have not been able to connect, however, and, now during this challenging time due to the CONVID-19, we are

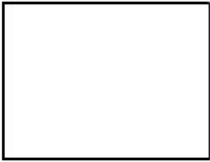


concerned with the impacts to finalizing the Plan and our anticipated milestones for both Bridgeport and Meriden. May we schedule a call on how we can move forward?

Thank you for your time and consideration of our request.

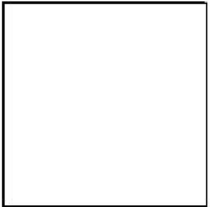
Please take care and stay well.

Respectfully,  
Tita

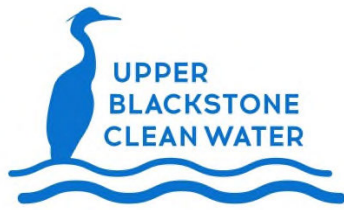


Tita LaGrimas | VP Regulatory Affairs and Sustainability  
Tradebe Environmental Services, LLC

o. +1 219-354-2352 | m. +1 219-746-8713 |  
e. [Tita.LaGrimas@tradebe.com](mailto:Tita.LaGrimas@tradebe.com) | [web](#) | [LinkedIn](#)



This e-mail and any attachments may be confidential or legally privileged. If you have received this e-mail in error or are not the intended recipient, please notify the sender immediately and delete the e-mail. Any unauthorized copying, distribution or use of the information in this e-mail or any attachments is strictly prohibited.



March 30, 2020

Ms. Sandra Schwartz  
Air Compliance Clerk  
USEPA Region 1  
5 Post Office Square, Suite 100  
Mail code: OES04-2  
Boston, MA 02109-3912

Re: Upper Blackstone Clean Water 40 CFR 62 Subpart LLL Compliance Testing  
Postponement for EU1 and EU2

Dear Ms. Schwartz,

Due to the Coronavirus (COVID-19) pandemic Upper Blackstone Clean Water (Upper Blackstone) will be postponing the April 2020 stack testing as it is not reasonably practicable to do so and also ensure the safety of plant and contractor personnel per 40CFR62.16030(f)(1)&(2). The Upper Blackstone treatment facility is a critical utility infrastructure, and as such, greater than mandated precautions to personnel are in order.

On March 18, 2020 in response to the spread of COVID-19, Upper Blackstone Board of Directors voted to authorize the utility to move into a declared state of emergency status. In response to this declaration, Upper Blackstone's management has modified business operations to protect employee safety and maintain essential operations. Among the changes, is a division of staff into A and B teams to limit exposure between shifts, practicing social distancing and designating some plant personnel to work all or primarily from home. In addition, the facility has been closed to outside contractors and to visitors as much as possible.

The prior stack testing for EU1 and EU2 was conducted between March 13<sup>th</sup> and 30<sup>th</sup>, 2017. The next round of stack testing, required within 37 months of the prior stack testing, was originally scheduled between April 1<sup>st</sup> and 17<sup>th</sup>, 2020. Under the circumstances, there will not be adequate staff available to conduct the testing. In addition, bringing outside contractors on site would expose staff to additional risk. It is therefore prudent to postpone the April 2020 testing, but this will result in falling out of compliance with respect to stack testing frequency.

As I'm sure you are aware this is an evolving situation that Upper Blackstone could not foresee. At this time we have not identified new test dates for either EU1 or EU2; however, Upper Blackstone plans to test as soon as plant and contractor safety can be better assured. Upper

Sandra Schwartz, Air Compliance Clerk

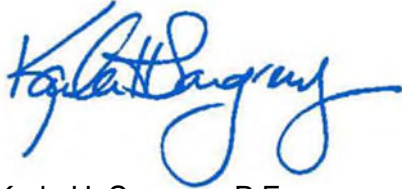
March 30, 2020

Page 2

Blackstone will notify USEPA of the new test dates when more information is known. If you have any questions, please contact us.

Very truly yours;

UPPER BLACKSTONE CLEAN WATER



Karla H. Sangrey, P.E.  
Engineer Director / Treasurer

C: Steve Rapp, USEPA ([Rapp.steve@Epa.gov](mailto:Rapp.steve@Epa.gov))  
Bill Osbahr, USEPA ([Osbahr.william@Epa.gov](mailto:Osbahr.william@Epa.gov))  
Thomas Hannah, MassDEP ([thomas.hannah@state.ma.us](mailto:thomas.hannah@state.ma.us))  
Paul Dwiggin, MassDEP ([paul.dwiggin@state.ma.us](mailto:paul.dwiggin@state.ma.us))  
Dorothy Buckoski, Epsilon Associates ([dbuckoski@epsilonassociates.com](mailto:dbuckoski@epsilonassociates.com))

## Melcher, John

---

**Subject:** FW: 2020 EU1 and EU2 Compliance Testing Request for Delay

---

**From:** Rapp, Steve

**Sent:** Tuesday, March 31, 2020 12:33 PM

**To:** 'Dennis Lowe' <[DLowe@ubcleanwater.org](mailto:DLowe@ubcleanwater.org)>; Schwartz, Sandra <[Schwartz.Sandra@epa.gov](mailto:Schwartz.Sandra@epa.gov)>

**Cc:** Karla Sangrey <[KSangrey@ubcleanwater.org](mailto:KSangrey@ubcleanwater.org)>; Dorothy Buckoski <[dbuckoski@epsilonassociates.com](mailto:dbuckoski@epsilonassociates.com)>; Dwiggin, Paul (DEP) <[paul.dwiggin@state.ma.us](mailto:paul.dwiggin@state.ma.us)>; Hannah, Thomas (DEP) <[thomas.hannah@state.ma.us](mailto:thomas.hannah@state.ma.us)>; Osbahr, Bill <[osbahr.william@epa.gov](mailto:osbahr.william@epa.gov)>

**Subject:** RE: 2020 EU1 and EU2 Compliance Testing Request for Delay

Dennis,

Thank you for your message.

Steve

Steve Rapp  
Chief, Air Compliance Section  
U.S. E.P.A., Region 1  
5 Post Office Square, Suite 100  
Mailcode: 04-2  
Boston, MA 02109  
617-918-1551

---

**From:** Dennis Lowe <[DLowe@ubcleanwater.org](mailto:DLowe@ubcleanwater.org)>

**Sent:** Monday, March 30, 2020 4:06 PM

**To:** Schwartz, Sandra <[Schwartz.Sandra@epa.gov](mailto:Schwartz.Sandra@epa.gov)>

**Cc:** Karla Sangrey <[KSangrey@ubcleanwater.org](mailto:KSangrey@ubcleanwater.org)>; Dorothy Buckoski <[dbuckoski@epsilonassociates.com](mailto:dbuckoski@epsilonassociates.com)>; Rapp, Steve <[Rapp.Steve@epa.gov](mailto:Rapp.Steve@epa.gov)>; Dwiggin, Paul (DEP) <[paul.dwiggin@state.ma.us](mailto:paul.dwiggin@state.ma.us)>; Hannah, Thomas (DEP) <[thomas.hannah@state.ma.us](mailto:thomas.hannah@state.ma.us)>; Osbahr, Bill <[osbahr.william@epa.gov](mailto:osbahr.william@epa.gov)>

**Subject:** 2020 EU1 and EU2 Compliance Testing Request for Delay

Dear Ms. Schwartz,

Due to the Coronavirus (COVID-19) pandemic Upper Blackstone Clean Water (Upper Blackstone) will be postponing the April 2020 stack testing as it is not reasonably practicable to do so and also ensure the safety of plant and contractor personnel per 40CFR62.16030(f)(1)&(2). The Upper Blackstone treatment facility is a critical utility infrastructure, and as such, greater than mandated precautions to personnel are in order.

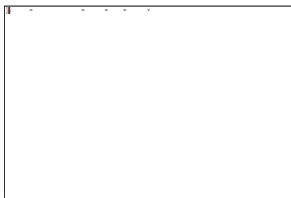
On March 18, 2020 in response to the spread of COVID-19, the Upper Blackstone Board of Directors voted to authorize the utility to move into a declared state of emergency status. In response to this declaration the Upper Blackstone's management has modified business operations to protect employee safety and maintain essential operations. Among the changes, is a division of staff into A and B teams to limit exposure between

shifts, practicing social distancing and designating some plant personnel to work all or primarily from home. In addition, the facility has been closed to outside contractors and to visitors as much as possible.

The prior stack testing for EU1 and EU2 was conducted between March 13<sup>th</sup> and 30<sup>th</sup>, 2017. The next round of stack testing, required within 37 months of the prior stack testing, was originally scheduled between April 1<sup>st</sup> and 17<sup>th</sup>, 2020. Under the circumstances, there will not be adequate staff available to conduct the testing. In addition, bringing outside contractors on site would expose staff to additional risk. It is therefore prudent to postpone the April 2020 testing, but this will result in falling out of compliance with respect to stack testing frequency.

As I'm sure you are aware this is an evolving situation that Upper Blackstone could not foresee. At this time we have not identified new test dates for either EU1 or EU2; however, Upper Blackstone plans to test as soon as plant and contractor safety can be better assured. The Upper Blackstone will notify USEPA of the new test dates when more information is known. If you have any questions, please contact us.

Sincerely,



**Dennis Lowe**  
**Regulatory Compliance Engineer**  
**Upper Blackstone Clean Water**  
**50 Route 20**  
**Millbury, MA 01527**  
**Email: [dlowe@ubcleanwater.org](mailto:dlowe@ubcleanwater.org)**  
**Office: 508-755-1286 x27**  
**Fax: 508-755-1289**  
**[ubcleanwater.org](http://ubcleanwater.org)**

**Melcher, John**

---

**Subject:** FW: Agenda for Call Regarding SSI Stack Testing Upper Blackstone

---

**From:** Rapp, Steve  
**Sent:** Thursday, March 26, 2020 2:58 PM  
**To:** 'Dorothy Buckoski' <[dbuckoski@epsilonassociates.com](mailto:dbuckoski@epsilonassociates.com)>  
**Subject:** RE: Agenda for Call Regarding SSI Stack Testing

Dorothy,

Good afternoon. Hope you are well. Here's the link to the policy guidance that just came out dealing with delays.

<https://www.epa.gov/enforcement/covid-19-implications-epas-enforcement-and-compliance-assurance-program>

Take care.

Steve

---

**From:** Dorothy Buckoski <[dbuckoski@epsilonassociates.com](mailto:dbuckoski@epsilonassociates.com)>  
**Sent:** Tuesday, March 24, 2020 10:02 AM  
**To:** Rapp, Steve <[Rapp.Steve@epa.gov](mailto:Rapp.Steve@epa.gov)>  
**Subject:** Agenda for Call Regarding SSI Stack Testing

Hi Steve –

Left you a VM message yesterday requesting a call. Here is the agenda for the call:

- (1) Practicality of rescheduling stack testing at UBCW under the current circumstances
- (2) What other SSI facilities are doing in Region 1
- (3) USEPA HQ communique status

I'm in until 4:30 PM today and don't have other calls scheduled at the moment. Hoping to hear from you according to your priorities.

UBCW asked me to check in with you on these agenda items.

Hope you and your family are safe and well.

Best regards, Dorothy

**Dorothy K. Buckoski, PE** | Senior Consultant

**Epsilon Associates, Inc.**  
3 Mill & Main Place, Suite 250  
Maynard, Massachusetts 01754  
978.897.7100 | 978.461.6245 (direct) | 617.513.9339 (cell)  
[dbuckoski@epsilonassociates.com](mailto:dbuckoski@epsilonassociates.com) | [www.epsilonassociates.com](http://www.epsilonassociates.com)

# Robert G Smith Law

20 Halston Court  
Suite 200  
Baltimore, MD 21209  
Phone: 410.598.0194  
[besmith01@verizon.net](mailto:besmith01@verizon.net)

May 11, 2020

Chief, Environmental Enforcement Section  
Environment and Natural Resources Division  
U.S. Department of Justice  
Box 7611 Ben Franklin Station  
Washington, D.C. 20044-7611  
Re: DOJ No. 90-5-2-1-10424

Robert Buettner  
Air Compliance Branch  
Division of Enforcement and Compliance Assistance  
U.S. Environmental Protection Agency. Region 2  
290 Broadway. 21<sup>st</sup> Floor  
New York, New York 10007-1866  
(212) 637-5031  
[BuettnerJRobert@epa.gov](mailto:BuettnerJRobert@epa.gov)

Flaire Mills  
Associate Regional Counsel  
U.S. Environmental Protection Agency. Region 2  
Office of Regional Counsel  
290 Broadway, 17th Floor  
New York, New York 10007-1866  
(212) 637-3198  
[Mills.Flaire@epa.gov](mailto:Mills.Flaire@epa.gov)

**RE: FORCE MAJEURE REQUEST UNDER VIRGIN ISLANDS WATER AND POWER  
AUTHORITY CONSENT DECREE. CROIX FACILITY  
(Civil Action No. 2013-CV-00028) Date: May 7, 2020**

---

Dear Recipients:

I am writing on behalf of the Virgin Islands Water and Power Authority ("VIWAPA") pursuant to EPA's "COVID-19 Implications for EPA's Enforcement and Compliance Assurance Program," and under the above-referenced Consent Decree, to request force majeure relief, or, in the alternative a waiver of stipulated penalties, for a delay until the 3<sup>rd</sup> Quarter of 2020 in the currently applicable deadlines for completing certain training, auditing and testing requirements at the Estate Richmond Generating Facility on St. Croix under the Decree.

The request itself, and the detailed facts justifying this relief are fully set forth in the attached

Force Majeure Request executed on behalf of VIWAPA by Maxwell George, Jr., Environmental Affairs Manager of the Authority.

Should you have any questions or require and further information concerning this request, please be sure to let me know.

Very truly yours,



Robert G. Smith  
Environmental Counsel for VIWAPA

cc: Robert Buettner. w/enc. by email  
Myles E. Flint II, Esq. w/enc.by email  
Laura J. Rowley, Esq. w/enc.by email  
Ralph Lonergan w/enc. by email  
Gregory Rhymer w/enc. by email  
Attorney Lorelei Farrington w/enc. by email  
Maxwell George, Jr. w/enc. by email  
Kevin Smalls w/enc. by email



# Robert G Smith Law

20 Halston Court  
Suite 200  
Baltimore, MD 21209  
Phone: 410.598.0194  
[besmith01@verizon.net](mailto:besmith01@verizon.net)

May 11, 2020

Chief, Environmental Enforcement Section  
Environment and Natural Resources Division  
U.S. Department of Justice  
Box 7611 Ben Franklin Station  
Washington, D.C. 20044-7611  
Re: DOJ No. 90-5-2-1-10424

Robert Buettner  
Air Compliance Branch  
Division of Enforcement and Compliance Assistance  
U.S. Environmental Protection Agency. Region 2  
290 Broadway. 21<sup>st</sup> Floor  
New York, New York 10007-1866  
(212) 637-5031  
[BuettnerJRobert@epa.gov](mailto:BuettnerJRobert@epa.gov)

Flaire Mills  
Associate Regional Counsel  
U.S. Environmental Protection Agency. Region 2  
Office of Regional Counsel  
290 Broadway, 17th Floor  
New York, New York 10007-1866  
(212) 637-3198  
[Mills.Flaire@epa.gov](mailto:Mills.Flaire@epa.gov)

**RE: FORCE MAJEURE REQUEST UNDER VIRGIN ISLANDS WATER AND POWER  
AUTHORITY AMENDED CONSENT DECREE. THOMAS AND ST. JOHN  
FACILITIES (Civil Action Number 3:14-cv-00086-CVG-RM and DOJ Case Number  
90-5-2-1-10424, as amended) Date: May 7, 2020**

---

Dear Recipients:

I am writing on behalf of the Virgin Islands Water and Power Authority ("VIWAPA") pursuant to EPA's "COVID-19 Implications for EPA's Enforcement and Compliance Assurance Program," and under the above-referenced Amended Consent Decree, to request force majeure relief, or, in the alternative a waiver of stipulated penalties, for a delay until the 3<sup>rd</sup> Quarter of 2020 in the currently applicable deadlines for completing certain training, auditing and testing requirements under the Decree at the Estate Richmond Generating Facility on St. Thomas and the St. John generating.

The request itself, and the detailed facts justifying this relief are fully set forth in the attached Force Majeure Request executed on behalf of VIWAPA by Maxwell George, Jr., Environmental Affairs Manager of the Authority.

Should you have any questions or require and further information concerning this request, please be sure to let me know.

Very truly yours,



Robert G. Smith  
Environmental Counsel for VIWAPA

cc: Robert Buettner. w/enc. by email  
Myles E. Flint II, Esq. w/enc.by email  
Laura J. Rowley, Esq. w/enc.by email  
Ralph Lonergan w/enc. by email  
Gregory Rhymer w/enc. by email  
Attorney Lorelei Farrington w/enc. by email  
Maxwell George, Jr. w/enc. by email  
Kevin Smalls w/enc. by email

## Melcher, John

---

**From:** Perkins, Chris <perkinsc@wseinc.com>  
**Sent:** Tuesday, March 24, 2020 12:00 PM  
**To:** Koopman, Douglas  
**Subject:** Middlesex TRC memo, gen update  
  
**Importance:** High

Hi Doug, I hope this email finds you and your family and friends all healthy and safe while living in this new, hopefully temporary, reality.

I'm checking in on the Middlesex plant and AO. We owe a TRC memo with data and next steps, but I will fully acknowledge I am a bit tardy with its submittal. I have had a draft on my desk for several weeks now but I have not been able to pick it up as we've been working to prepare for a remote workforce. Probably not unlike you've been doing as well.

It is something I hope to get to later this week, but every day presents new challenges, so I am asking for relief from any short term delinquencies. The school remains on board to implement what we recommend for next steps and will be discussing committing the necessary capital when they meet later this spring. I am available by cell to discuss anything in more detail.

Strange days! Take care,  
Chris

**Christopher M. Perkins, PE**  
VICE PRESIDENT



Weston & Sampson  
office: 603-431-3937 x5003  
mobile: 207-450-2899  
[westonandsampson.com](http://westonandsampson.com)

[Facebook](#) | [Twitter](#) | [LinkedIn](#)

The contents of this e-mail and any attachments are the property of the Weston & Sampson companies. The e-mail contents are only to be used by the intended recipient of the e-mail. If you are not the intended recipient, then use, disclosure, copying, distribution or reliance on the e-mail is prohibited. All professional advice from us should be obtained in writing (not e-mail).

## Melcher, John

---

**From:** Koopman, Douglas  
**Sent:** Thursday, April 02, 2020 2:08 PM  
**To:** Perkins, Chris  
**Cc:** Susannah.king@state.ma.us; Langley, Lealdon (DEP); joseph.nerden@state.ma.us; Lama, Tenzin (DEP)  
**Subject:** response to your request for extension

Chris

Thank you for your email requesting guidance with respect to submitting the TRC report on behalf of the Middlesex School as required by EPA Order CWA-AO-R01-FY19-07 (the Order).

In response to noncompliance related to the COVID-19 pandemic, Assistant EPA Administrator for Enforcement and Compliance Assurance Susan Parker Bodine has announced the exercise of enforcement discretion for certain environmental legal obligations. That memo, accessible at the link below, establishes specific conditions to be met, if you are unable to meet those obligations identified in an administrative settlement agreement.

<https://www.epa.gov/sites/production/files/2020-03/documents/oecamemooncovid19implications.pdf>

As indicated in the Bodine memo, entities should make every effort to comply with their EPA administrative settlement agreements. However, if for reasons related to COVID-19, you are not able to timely submit any reports required by the agreements you should follow the procedures in those agreements (see Section V. “Notification Procedures” of the Middlesex School Order) related to notifying EPA of any non-compliance. This includes documenting the specific reasons for the delay and submitting the report as soon as possible. In addition, please let me know when you expect to be able to submit the TRC report.

Details related to NPDES Reporting in Response to the COVID-19 Pandemic can be found at:

<https://netdmr.zendesk.com/hc/en-us/articles/360041746691-Covid-19-Information-Page>

Feel free to contact me or Jeff Kopf, Senior Enforcement Counsel, at (617) 918-1796 if you have questions on how this policy relates to your circumstances

Thanks

Doug

Douglas Koopman  
(617)918-1747  
[Koopman.Douglas@epa.gov](mailto:Koopman.Douglas@epa.gov)  
EPA Region I  
5 Post Office Square, Suite 100  
Mail code 04-03  
Boston MA, 02109-3912



WeylChem US Inc.  
2114 Larry Jeffers Road  
Elgin SC 29045  
Phone: (803) 438-3471  
Fax: (803) 438-4497

Certified Mail

E-mail to [lori.jonas@usdoj.gov](mailto:lori.jonas@usdoj.gov)  
[thompsrb@dhec.sc.gov](mailto:thompsrb@dhec.sc.gov)

April 7, 2020

Chief, Environmental Enforcement Section  
Environmental and Natural Resources Division  
U.S. Department of Justice  
Box 7611 Ben Franklin Station  
Washington, D.C. 20044-7611

RE: Force Majeure- LDAR Annual Audit Postponement

To Whom It May Concern:

The COVID-19 National Emergency and the Emergency Stay-Home Order issued by South Carolina Governor Henry McMaster on April 6, 2020, will delay the performance of WeylChem's annual LDAR audit currently scheduled for April 14-16, 2020. WeylChem believes these extraordinary events satisfy the definition of "Force Majeure" in the 2013 Consent Decree between EPA/DHEC and WeylChem (C/A No. 3:12-3639-CMC). Our facility has implemented a strict new policy regarding visitors during the Covid-19 pandemic. We have restricted visitors allowed on site to better ensure the health and safety of our employees. This is a very hands on-audit, and we would be unable to comply with social distancing and other CDC-recommended best practices.

WeylChem continues to implement the LDAR program as required by the Consent Decree. We anticipate that we will be able to reschedule the audit by June 30, 2020 and submit the audit report by July 30, 2020. This date is subject to change depending on circumstances caused by the pandemic.

If you have any questions please feel free to contact me at (803) 438-4472 or via email at [Sarah.Williams@weylchem.com](mailto:Sarah.Williams@weylchem.com).

Sincerely,

A handwritten signature in cursive script that reads "Sarah F. Williams".

Sarah F. Williams  
HSE&Q Manager

cc: Beverly Spagg, Chief USEPA Region 4  
Maurice L. Horsey IV, Chief USEPA Region 4  
Cesar A. Zapata Chief USEPA Region 4  
Randy Stewart, Manager SCDHEC  
Beth Partlow, Law Office of Elizabeth B. Partlow, LLC.





UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 4  
SAM NUNN ATLANTA FEDERAL CENTER  
61 FORSYTH STREET  
ATLANTA, GEORGIA 30303-8960

**VIA ELECTRONIC MAIL**

Sarah F. Williams  
HSE&Q Manager  
WeylChem US Inc.  
2114 Larry Jeffers Road  
Elgin, South Carolina 29045  
[Sarah.Williams@weylchem.com](mailto:Sarah.Williams@weylchem.com)

Re: Force Majeure Notification Related to COVID-19 Pandemic  
Elgin, South Carolina Facility  
*United States v. WeylChem US, Inc.*, Case No. 3:12-3639-CMC

Dear Ms. Williams:

The U.S. Department of Justice (DOJ) and the U.S. Environmental Protection Agency are in receipt of WeylChem US Inc.'s (WeylChem) April 7, 2020, letter providing notification of a claim of force majeure. Specifically, in accordance with Section VIII of the consent decree in the above-referenced action (Consent Decree), WeylChem provided notice of a potential force majeure event related to the COVID-19 pandemic that will delay the performance of certain obligations under the Consent Decree at its facility in Elgin, South Carolina (the Elgin Facility). On April 7, 2020, in accordance with Paragraph 52 of the Consent Decree, WeylChem indicates that it provided notice within 72 hours of when it first knew that the event might cause a delay and a written explanation regarding its force majeure claim. WeylChem asserts a force majeure event based on the current COVID-19 public health emergency, including the COVID-19 National Emergency and the Emergency Stay-Home Order issued by South Carolina Governor Henry McMaster on April 6, 2020. The EPA has consulted with DOJ and the South Carolina Department of Health and Environmental Control and this response is made on behalf of the EPA under Paragraph 53 of the Consent Decree.

This response is intended to cover the facility that is the subject of the above-referenced Consent Decree. WeylChem should note that Paragraph 51 of the Consent Decree requires it to undertake best efforts to fulfill the obligations of the Consent Decree, including the use of best efforts to anticipate any potential force majeure event both as it is occurring and after it has occurred, to prevent or minimize delay to the greatest extent possible. Additionally, under Paragraph 51, WeylChem's financial inability to perform any Consent Decree obligation is not considered a force majeure event.

We recognize that the COVID-19 pandemic is an historic event impacting many. Based upon WeylChem's representations in its notification, the EPA agrees to the following under, and as permitted by, Paragraph 53 of the Consent Decree:

**Leak Detection and Repair (LDAR) Audit:** Paragraph 15 of the Consent Decree requires that WeylChem implement the Enhanced Leak Detection and Repair Program set forth in Appendix A, Enhanced Leak Detection Program. Paragraph 24 of Appendix A requires WeylChem to retain a third party with

experience in LDAR audits to conduct an LDAR audit once every 12 months. WeylChem has, as a result of the COVID-19 pandemic, restricted visitors on site to better protect the health and safety of its employees and therefore cannot timely complete its annual LDAR audit which was originally scheduled for April 14 – 16, 2020.

Under the circumstances presented, the EPA accepts WeylChem's force majeure claim concerning Paragraph 15 of the Consent Decree and Paragraph 24 of Appendix A, and grants WeylChem's request that the EPA accept the annual LDAR audit, originally scheduled for April 14 – 16, 2020, to be completed by June 30, 2020, and for the annual report to be submitted by July 30, 2020. However, the EPA expects WeylChem to continue to implement the Enhanced Leak Detection Program as otherwise outlined in Appendix A.

Further, the EPA expects WeylChem to continue to take all necessary steps at its Elgin Facility to prevent or minimize any increased risk to human health and safety, and to implement good air pollution control practices as required by applicable standards, rules, and/or permit requirements. If you have questions, please contact Jean Campbell at (404) 562-9193 or by email at [campbell.jean@epa.gov](mailto:campbell.jean@epa.gov).

Sincerely,

CAROL KEMKER

Digitally signed by CAROL  
KEMKER  
Date: 2020.05.05 13:13:30 -04'00'

Carol L. Kemker

Director

Enforcement and Compliance Assurance Division

cc: Steve O'Rourke, US DOJ

Lori Jonas, US DOJ

Michael Shroup, SCDHEC, Air Compliance Management Division Director



## Melcher, John

---

**Subject:** FW: Annual CMOM Report for 2019 - time extension request - Winnepesaukee River Basin Program (WRBP) – Permit No. NH0100960

**From:** Ptak, Teresa <[Teresa.Ptak@des.nh.gov](mailto:Teresa.Ptak@des.nh.gov)>

**Sent:** Wednesday, April 01, 2020 12:56 PM

**To:** McMillin, Sharon <[Sharon.McMillin@des.nh.gov](mailto:Sharon.McMillin@des.nh.gov)>

**Cc:** Gordon, Ray <[ray.gordon@des.nh.gov](mailto:ray.gordon@des.nh.gov)>; Pastrana-Del Valle, Solanch <[pastrana-del-valle.solanch@epa.gov](mailto:pastrana-del-valle.solanch@epa.gov)>

**Subject:** RE: Annual CMOM Report for 2019 - time extension request - Winnepesaukee River Basin Program (WRBP) – Permit No. NH0100960

Sharon,

Thank for your email requesting guidance with respect to submitting your 2019 CMOM annual report under your NPDES permit.

In response to noncompliance related to the COVID-19 pandemic, Assistant EPA Administrator for Enforcement and Compliance Assurance Susan Parker Bodine has announced the exercise of enforcement discretion for certain environmental legal obligations. That memo, accessible at the link below, establishes specific conditions to be met, if you are unable to meet those obligations identified in your NPDES permit. <https://www.epa.gov/sites/production/files/2020-03/documents/oecamemooncovid19implications.pdf>

As indicated in the Bodine memo, entities should make every effort to comply with their NPDES permits. However, if for reasons related to COVID-19, you are not able to timely submit any reports required by your permit you should document the specific reasons for the delay, and submit the report as soon as possible.

It is noted that the anticipated submittal date is **June 15, 2020**.

Details related to NPDES Reporting in Response to the COVID-19 Pandemic can be found at: <https://netdmr.zendesk.com/hc/en-us/articles/360041746691-Covid-19-Information-Page>

Feel free to contact Solanch Pastrana-Del Valle of EPA or Teresa Ptak of NHDES if you have questions on how this policy relates to your circumstances.

---

Teresa Ptak  
NPDES Permits & Compliance  
Wastewater Engineering Bureau, Water Division, NHDES  
29 Hazen Drive, PO Box 95, Concord, NH 03302  
Office 603-271-1497  
Fax 603-271-4128  
[teresa.ptak@des.nh.gov](mailto:teresa.ptak@des.nh.gov)

---

**From:** McMillin, Sharon <[Sharon.McMillin@des.nh.gov](mailto:Sharon.McMillin@des.nh.gov)>

**Sent:** Wednesday, April 1, 2020 10:22 AM

**To:** Ptak, Teresa <[Teresa.Ptak@des.nh.gov](mailto:Teresa.Ptak@des.nh.gov)>; Denny Dart ([dart.denny@epa.gov](mailto:dart.denny@epa.gov)) <[dart.denny@epa.gov](mailto:dart.denny@epa.gov)>

**Cc:** Gordon, Ray <[ray.gordon@des.nh.gov](mailto:ray.gordon@des.nh.gov)>

**Subject:** Annual CMOM Report for 2019 - time extension request - Winnepesaukee River Basin Program (WRBP) – Permit No. NH0100960

The WRBP is requesting a short time extension to complete the Annual CMOM Report due April 15, 2020.

Like other WWTPs, the WRBP is facing challenges dealing with various issues related to COVID-19 that are interfering with our availability to consistently work on this report. Be assured that our goal is continued compliance and maintenance of our wastewater collection and treatment systems. We also are continuing to support one of our co-permittees (Dept. of Administrative Services Laconia Lakes Region Facility) as they complete their 2019 annual report since WRBP staff assisted them in several on-site manhole and sewer line inspections and the GIS mapping of their infrastructure in 2019.

Therefore, the WRBP respectfully requests a new submission due date of June 15, 2020 for the WRBP CMOM annual report.

Thank you and I look forward to your response.

Sharon A. McMillin, PhD, CPM  
Department of Environmental Services, Water Division  
Environmental Program Administrator, Winnepesaukee River Basin Program  
528 River St.  
PO Box 68  
Franklin, NH 03235  
(603) 934-4032  
[Sharon.mcmillin@des.nh.gov](mailto:Sharon.mcmillin@des.nh.gov)